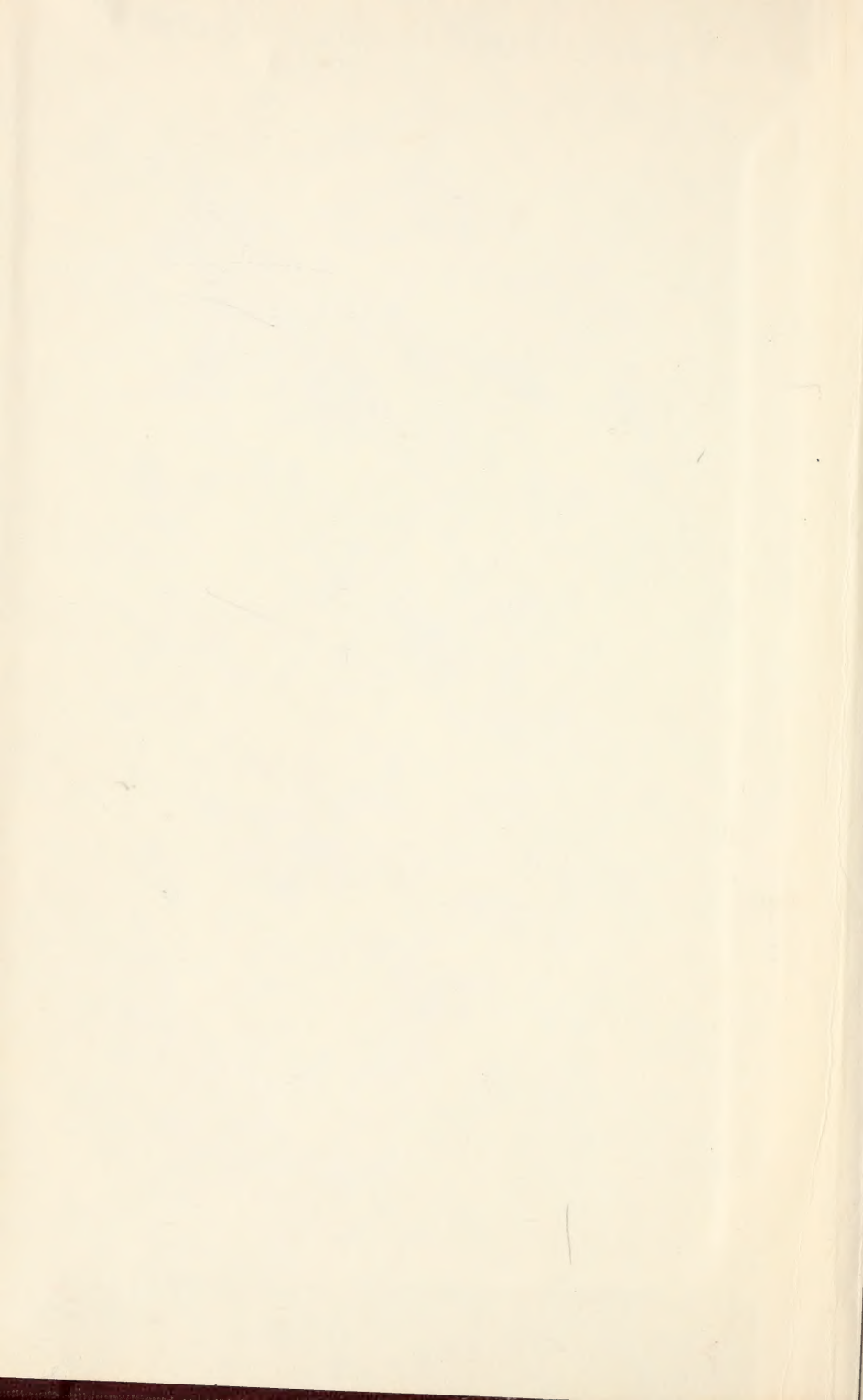






Digitized by the Internet Archive
in 2007 with funding from
Microsoft Corporation

203 (50) 4211

THE
JUDGES OF NEW BRUNSWICK
AND THEIR TIMES

FROM THE MANUSCRIPT OF
THE LATE JOSEPH WILSON LAWRENCE,

EDITED AND ANNOTATED BY
ALFRED A. STOCKTON, LL. D., D. C. L.

95-5-89
814109

Lutwyche, Edward G. (3), 329
Ward, John Willia, Earl of Dudley (8), 330
Hamilton-Gordon, George, 331
Robinson, Frederick, John, 331
Stanley, Edward George, 332
Spring-Rice, Thomas, 334
Harvey, major-gen. Sir John, 334
Head, Sir Edmund Walker, 335
Kinnear, Hon. William B. 360
Cardwell, Edward, 361
Hazen, Robert Leonard, 398
Gray, Hon. John H. 401
Thomson, S.R., 401
Saunders John Simcoe, p. 423
Street, George Frederick, 425
Fenety, George E, 459
Beckwith, John A. 460
Hill, George Stilman, 462
End, William, 464
Glenelg, Lord, 464
Crane, William, 464
Odell, William Franklin, 465
Reade, Alfred, 465
Street, John Ambrose, 466
Chandler, E.B., 467
Wyer, Thomas, 478
Partelow, John R., 500
Needham, William H. 502
Weldon, John Wesley, 503
Ritchie, family of, 505
Campbell, Captain Peter, 527
Fisher, Charles, 528

PREFACE.

The greater part of the materials utilized in the preparation of this History of the Judges of New Brunswick and Their Times was accumulated through the indefatigable researches of the late Mr. Joseph W. Lawrence, who spent much time and pains in the undertaking.

Unfortunately, in some respects, Mr. Lawrence delayed the publication of his book until life was too far advanced to admit of his seeing the consummation of his labors. At the time of his death, on the 6th of November, 1892, he was in his seventy-fifth year, and his manuscript copy not yet complete.

More than twelve years later, Dr. A. A. Stockton undertook the task of editing and completing the manuscript for publication. Needless to say, the late Dr. Stockton was a man admirably fitted for the work. He was possessed of the true historic instinct and gifted with fine literary taste; he was a ready writer, and, what was of special advantage in a work of this kind, a trained lawyer. Valuable as was the work of Mr. Lawrence, and great and enduring as is the obligation under which he has placed those who take an interest in the early history of New Brunswick, there remained much for Dr. Stockton to do in the way of careful revision, addition of notes and important supplementary material. At the time of Dr. Stockton's death, on the 15th of March last, the publication had proceeded as far as the end of Chapter XVI.

The writer then undertook to complete the work, which he has now done to the best of his ability, in view of the many distractions and interruptions consequent upon his ministerial duties and the shortness

of the time at his disposal. Mr. Lawrence's sketch of Judge Wilmot was somewhat incomplete, and had to be largely re-written. Neither Mr. Lawrence nor Dr. Stockton left any data with regard to the lives of Hon. Neville Parker, Sir Wm. J. Ritchie and Sir John C. Allen. For this part of the work, therefore, the writer alone must be held responsible. A work produced under such exceptional circumstances will of necessity lack something in the way of unity of design, and even reflect, in a greater or less degree, the personal bias of its several authors, nevertheless it is hoped that it may prove a not uninteresting or unimportant addition to the political and judicial history of New Brunswick.

It was the design of the late Mr. Lawrence to bring the history of the Judges down to the period of the Confederation of the British American Provinces. This intention has been respected by those who have taken up the work where he laid it down.

W. O. RAYMOND, F. R. S. C.

St. John, N. B.,
September 26, 1907.

PUBLISHER'S PREFACE.

The literary history of this work having been dealt with in the preface by Dr. Raymond, it will be of interest to the reader to know something of the conditions of its publication.

When the late Joseph Wilson Lawrence laid down the burthen of life on the sixth day of November, 1892, in his seventy-fifth year, he left behind him, among other manuscripts, all of them in a more or less incomplete and chaotic form, a history of the Life and Times of the Judges of New Brunswick. Mr. Lawrence was a man whose hobby, in his later years particularly, was the study of the history of his native province of New Brunswick. To him posterity is greatly indebted for the preservation of much that is valuable in local history as well as for the awakening of the public mind to a sense of the value and importance of preserving the records and traditions of those who had gone before. His principal published work, "Footprints," issued in 1883, indicates pretty clearly the style of his other work. Lacking the gift of weaving historical material into a systematic and chronologically arranged form, his manuscript, which is now in an amended form published for the first time, left much to be done before the work was ready for the printer's hands.

From the time of the death of Mr. Lawrence, until about the year 1901, the manuscript, just as the author had left it, written in a painfully crabbed hand, scattered through about a dozen exercise books, remained in the custody of his literary legatee, Dr. A. A. Stockton.

About the last date named, the writer made frequent attempts to induce Dr. Stockton to begin the publication of the work. His time, however, being

very fully occupied with the cares of a very active professional and political life, and his health being not of the best, no progress was made for some time, except that largely through his efforts the provincial government of New Brunswick set aside the sum of seven hundred and fifty dollars, or to be more exact agreed to defray the cost of publication of the work at the cost of one dollar and a half per page, not to exceed upon the whole the sum of seven hundred and fifty dollars.

Finding the years slip by one by one without any real progress towards the accomplishment of the work, the writer suggested its issue in serial form in *ACADIENSIS*, so arranged that the several parts might be assembled in one complete volume at the completion of the task if so desired by each individual subscriber to the magazine. The special advantage as pointed out to Dr. Stockton, to be gained by this system of publication, being the opportunity given for careful editing, a small portion at a time, instead of waiting for the time, which, as proved by subsequent events, would never have arrived, namely, when he felt that he had sufficient leisure and strength to take up the whole task and push it through to completion.

An arrangement was accordingly entered into by which one-half of the government grant was to be retained by Dr. Stockton as an honorarium for the work of editing the manuscript, the remaining half being contributed towards the cost of publication.

As the published work has considerably exceeded the number of pages specified in the grant and the price per page actually paid the printer was much greater than the proportion of the grant received by *ACADIENSIS*, no provision being made for the cost of illustrating and binding, it will be observed that at least the

larger half of the actual expense of the publication has been borne by this magazine.

These facts are not made public from any desire upon the part of the editor of *ACADIENSIS* to share unduly in the credit due for the placing of this valuable and important historical work in a permanent form, but as a contribution to a knowledge of the conditions under which historical publications must appear in these Acadian provinces.

Other equally valuable and important manuscripts of an historical nature would probably be available for immediate publication could the provincial government be induced to aid in the necessary cost of printing and binding, and it is to be hoped that their very generous action in making possible the publication of the present work may be followed from time to time by further assistance of a like character in preserving from destruction other manuscripts which may appear to be worthy of publication.

DAVID RUSSELL JACK.

THE
JUDGES OF NEW BRUNSWICK
AND THEIR TIMES.

CHAPTER I.

ORGANIZATION OF THE PROVINCE.

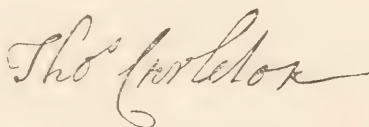


THROUGH the Revolutionary War, Nova Scotia and Canada remained loyal to the Crown, and at its close received a large increase of population from among those of the Americans who were unwilling or were not permitted to reside in the newly created Republic. In the spring of 1783 a fleet of twenty vessels, filled with expatriated supporters of the Crown, arrived at the mouth of the St. John river, from which the disembarkation took place the 18th of May. There were continuous arrivals at this point during the summer; the fall fleet, as it is commonly called, arrived in October, although the last departure from New York—that of the loyal American regiments—occurred on the 25th of November, known as Evacuation day.

A royal commission was issued, bearing date the 16th day of August, A. D. 1784, to Thomas Carleton, with full instructions and power, by and with the

advice and consent of his Council, to erect a specified portion of the Province of Nova Scotia into a separate province, to be called the Province of New Brunswick, with power to constitute Courts of Judicature, to make provision for calling on Assembly, and to do all things needful for the complete organization of New Brunswick as a separate province. (1.)

Thomas Carleton, with his family, arrived at Halifax in the ship "St. Lawrence" the 24th day of October, 1784, after a passage of fifty days. Ward Chipman, who was appointed Solicitor General, was also a passenger. They proceeded overland from Halifax to Digby, and arrived at Parr Town, at the mouth of the River St. John, on Sunday afternoon, the 21st day of November, in the sloop "Ranger," Captain Hatfield, master, after a passage of six hours from Digby. As they passed up the harbor a salute of seventeen guns was fired from Lower Cove Battery, and on the landing of the Governor the same number of guns was fired from Fort Howe. They went to the house of George Leonard, Esq., situate on the corner of Dock and Union streets, and which had been prepared as a residence for his Excellency.



The first meeting of Council was held at Parr Town, November 22nd, 1784, when his Majesty's commission constituting and appointing Thomas Carleton Esq., Governor General and Commander-in-Chief of the province having been duly published, his Excellency repaired to the Council chamber, where he took the oath of office as required by law, and then administer-

ed the same to George Duncan Ludlow, James Putnam, Abijah Willard, Gabriel G. Ludlow, Isaac Allen, William Hazen, and Jonathan Odell. These gentlemen being of the number nominated in the King's instructions to be of his Majesty's Council for the Province of New Brunswick, and the Governor and members of Council above named having taken their seats in Council, a proclamation of the Governor was read, designating the boundaries of the province as established in the King's commission, and commanding all officers, civil and military, to continue in the execution of their respective offices. (2.)

Regulations were established and published on the 14th of January, 1785, for the orderly and speedy settlement of New Brunswick; and on the 22nd of February following an order was passed for the speedy building and settlement of a town at St. Ann's Point, which Governor Carleton had personally visited and selected as a site for a town. The locality selected was ordered to be called Frederick Town, after his Royal Highness, the Bishop of Osnaburg. On the 29th of April, 1785, the Attorney General was ordered to prepare a charter incorporating the towns of Parr and Carleton into a city, to be called St. John. On the 18th day of May following a city was incorporated under the great seal of the Province of New Brunswick, when the Governor in Council appointed for the first year the following officers:

MAYOR.

Hon. Gabriel G. Ludlow.

RECORDER.

Ward Chipman, Esq.

4 JUDGES OF NEW BRUNSWICK

WARDS.	ALDERMEN.	ASSISTANT ALDERMEN
Kings,	George Leonard,	John Colville,
Queens,	William Pagan,	Fitch Rogers,
Dukes,	Thomas Menzies,	Munson Jarvis,
Sidney,	William Paine,	Richard Seaman,
Guys,	John Holland,	Adino Paddock,
Brooks,	Stephen Hoyt.	John Ness.

CHAMBERLAIN.
George Leonard.

MARSHALS AND SERJEANTS OF MACE.
James Stewart and Amos Arnold.

HIGH CONSTABLE.
Ebenezer Holly.

CONSTABLES.
Ludwick Cypher, James Birmingham, James McNeil, Philip Henriques, John McGill, and William Cooper.

The first printers at Parr Town were William Lewis and John Ryan. They issued on December 18th, 1783, the first newspaper at that place, known as *The Royal Gazette and Nova Scotia Intelligencer*. After the organization of New Brunswick in 1784, the name of the paper was changed to *The Royal New Brunswick Gazette and General Advertiser*. In the autumn of 1875, Christopher Sower, Deputy Postmaster General of New Brunswick, was appointed "Printer to the King's Most Excellent Majesty," and on the 11th of October of that year he issued from his printing office, Dock street, St. John, *The Royal Gazette and New Brunswick Advertiser*. The appointment of Christopher Sower King's printer was followed by Lewis and Ryan, who changed the name of their paper to *The St. John Gazette and Weekly Advertiser*. William Sanford Oliver was appointed the first sheriff and John Hazen the first coroner for the City and County of St. John. On the 26th of August, 1785, Col. Isaac Allen, Col. Edward Winslow, Lieut. Dugald

Campbell, Lieut. Edward Spell and Lieut. Munson Hoyt were appointed trustees or commissioners for effecting the speedy settlement of Fredericton. Writs were issued in October, 1785, to the sheriffs of the several counties of the province for the election of members to a general assembly. At such election every inhabitant who had been a resident was entitled to vote. The following proclamation was issued for the guidance of sheriffs in holding the elections:

INSTRUCTIONS TO THE SHERIFFS.

By command of His Excellency this day in Council, I am to inform you that the votes of Blacks are not to be admitted, Freeholders are not entitled to vote as such at the ensuing election, but as Inhabitants, and therefore can have a vote only where they live.

JON. ODELL,

Secretary of Council.

St. John, 15th October, 1785.

The following notice was also issued by the sheriff of St. John: (3)

To the inhabitants of the City and County of St. John, Province of New Brunswick,—

Take notice that on Monday, the seventh day of November next, I shall in said City, conformable to his Majesty's precepts to me directed, hold the election for six able, discreet, and faithful subjects of this Province to meet in General Assembly on the first Tuesday in January next, at the City Hall, in the City of Saint John, for the purpose in said precept mentioned. All males of full age inhabitants of the City and County, that have resided three months therein, are entitled to their votes on this occasion.

W. S. OLIVER,

Sheriff.

City of St. John, Oct. 18th, 1785.

6 JUDGES OF NEW BRUNSWICK

The elections throughout the province were duly held and members elected. The first House of Assembly was constituted as follows:

ST. JOHN.	YORK.
Jonathan Bliss,	Daniel Murray,
Ward Chipman,	Isaac Atwood,
William Pagan,	Henry Lyman,
Christopher Billop,	Edward Stelle.
John McGeorge,	SUNBURY.
Stanton Hazard.	William Hubbard,
	Richard Vandeburg.
WESTMORLAND.	QUEENS.
Amos Botsford,	Samuel Dickenson,
Charles Dixon,	John Yeomans.
Samuel Gay,	KINGS.
Andrew Kinnear,	John Coffin,
	Ebenezer Foster.
CHARLOTTE.	NORTHUMBERLAND.
William Paine,	William Davidson,
James Campbell,	Elias Hardy.
Robert Pagan,	
Peter Clinch.	

SPEAKER.
Amos Botsford.

CLERK.
William Paine.

The following Order in Council appointed William Paine Clerk of the Assembly:

NEW BRUNSWICK IN COUNCIL,
January 3, 1786.

His Excellency orders a commission under the great seal of the Province appointing William Paine Clerk of the House of Assembly. William Paine attended, took the oath of office required by law as Clerk of the Assembly.

By order of the Governor,

THOMAS KNOX,
Deputy Clerk of Council.

Before the seven years for which the House was elected had expired there were three deaths—Ebenezer

Foster, Stanton Hazard and William Davidson. Four members returned to the United States — William Paine, Richard Vandeburg, Edward Stelle, and John Hamilton, who had been elected for Kings in place of Ebenezer Foster. In consequence of the repeal of the Banishment Act, many persons, including a few members of the legislature, returned to their old homes. The case of William Paine is a special one. Through the war he was a physician in the army, and at its close retired on half pay. Before leaving New Brunswick he obtained permission from the British government and retained his half pay. When the war of 1812 between Great Britain and the United States commenced, Dr. Paine was called on by the British government to report for service. As he did not want to fight against his friends with whom he had lived for the past twenty-five years, he resigned his commission as a retired surgeon in the British army, losing his half pay, and became a naturalized citizen of the United States. Dr. Paine lived for nearly half a century after leaving New Brunswick. He died in 1833 in Worcester, Massachusetts.

The first meeting of the Legislature met on the 9th of January, 1786, in the Council Chamber at the City of St. John. (4.) His Excellency having by writs, directed to the sheriffs of the several counties, ordered a representation of the province to meet him in General Assembly, at this city, on the first Tuesday of January inst., and having summoned His Majesty's Council also to meet him in the said General Assembly at the time and place aforesaid, the Council met this day in Council Chamber, when His Excellency delivered the following speech:

Gentlemen of the Council and Gentlemen of the Assembly:—

A meeting of several branches of the Legislature for the first time in this new province, is an event of so great im-

portance, and must prove so conducive to its stability and prosperity, that I feel the highest satisfaction at seeing His Majesty's endeavours to procure the inhabitants every protection of a free Government in so fair a way of being finally successful.

The preceding winter was necessarily spent in guarding the people against those numerous wants, incident to their peculiar situation; and the summer has been employed as well in the prosecution of this essential business as in dividing the province and establishing the several offices and Courts of Justice requisite for the security of the farmer while engaged in raising a support for his family; and now that the season of the year renders travelling commodious, and allows you leisure to attend the public business without interruption to your private affairs, I have called you together, in compliance with the Royal instructions, that you may put the finishing hand to the arduous task of organizing the province by re-enacting such of the Nova Scotia laws as are applicable to our situation, and passing such Bills as you shall judge best calculated to maintain our rapid advance towards a complete establishment in this country.

Gentlemen of the Council:

That branch of the law of the old province which relates to crimes and misdemeanours, I would recommend to your first consideration; they are for the most part, if not altogether, extracted from the Statute Law of England, and will become our best security for the quiet and permanent enjoyment of private liberty and property. As it may in some instance admit of a doubt what part of these laws extend to this province, and which are lost by the erecting of a distinct Administration, it will be most eligible by renewing them to leave no possibility of uncertainty in a matter so nearly affecting the happiness of individuals and peace of the country. Those laws also which relate to the execution of Justice, civil and criminal, make another important object of your attention, and as the assistance of the Judges will be required in forming or reviewing them, they will, of course, I suppose originate with you.

Gentlemen of the Assembly:

Amongst the numerous subjects which will fall under your consideration after you have adopted such Acts of the Pro-

vince of Nova Scotia as you may find necessary or proper, I would particularly point out a Bill providing for the election of members to serve in General Assembly, and for regulating all such elections, as well as determining the qualifications of electors. A law also for registering anew all grants of land lying within this province, and made before our division from Nova Scotia, is necessary for ascertaining titles to estates, and will prove of the greatest use in their preservation. I am therefore instructed to recommend it.

Gentlemen of the Council and Gentlemen of the Assembly:—

I shall decline entering further into the particular objects that may be proper for your consideration in the course of the present session, but shall leave them to be occasionally communicated by message; in the meantime I have the fullest confidence that you will enter on the public business with a hearty disposition to join me in whatever maintains to the welfare of this infant colony. The liberality of the British Government to the unfortunate Loyalists in general, and the peculiar munificence and parental care of our most gracious sovereign to those of them settled in New Brunswick call loudly for every return that an affectionate and favored people can make it, and I am persuaded you cannot better show your gratitude on this behalf for the many unexampled instances of national and Royal bounty, than by promoting sobriety, industry and the practice of religion,—by discouraging all factions and party distinctions amongst us, and inculcating the utmost harmony between the newly-arrived Loyalists, and those of His Majesty's subjects formerly resident in the province. And gentlemen it is with real pleasure I declare, that our prospects are so favourable, that your exertions for those beneficial purposes can scarcely fail to render this asylum of loyalty the envy of the neighbouring States, and that by exercising the arts of peace, they who have taken refuge here, will not only be abundantly recompensed for their losses, but enabled to enjoy their connexion with the parent State and retain their allegiance to the best of Kings, which their conduct has proved they prize above all consideration.

The Council took into consideration His Excellency's speech, and particularly that part thereof which re-

commended to the Council an examination of the criminal code of laws, and those which related to the execution of justice, civil and criminal.

It was ordered that the Chief Justice, Mr. Justice Putnam, Mr. Justice Allen, Mr. Odell and Mr. Winslow be a standing committee for this purpose that they report from time to time such laws as they shall judge proper for the consideration of Council,—and that the other members have free access to them. The Legislature continued in session to the 8th of March, having passed sixty-one bills, when His Excellency prorogued it with the following speech:

Gentlemen of the Council and Gentlemen of the Assembly:—

The business of this session being finished, I take the opportunity of expressing the sense I entertain of your zeal and unanimity, in laying the foundation of civil happiness and prosperity in this new country. Public measures, adopted and pursued from genuine motives of public spirit, give us the fairest prospect of success. This, however, must in a great degree depend on a faithful and vigorous execution of the laws; to which I shall at all times gladly contribute by every exertion in my power, and in particular, by availing myself of the means you have put into my hands for the public safety and defence.

The following were the heads of the public departments of the province:

JONATHAN ODELL, *Provincial Secretary*. (5).

GEORGE SPROULE, *Surveyor General*.

ANDREW RAINSFORD, *Receiver General*.

RICHARD SEAMAN, *Provincial Treasurer*.

The Legislature, at its first session, appointed Brook Watson, of London, agent for the province.

NOTES.

(1) The part of Nova Scotia north of the Bay of Fundy, and lying to the westward of a line drawn due

north from a point twenty miles east of Cape Mispec, in 1764, was set off as the County of Sunbury. The writs for the election of representatives for this county were issued February the 3rd, 1765, when Beamish Glazier and Thomas Falconer were elected. The government appointed William Owen, Plato Denny and William Sherwood justices of the peace. Their first meeting was at Campobello, an island of the Bay of Fundy, granted in 1767 to William Owen, David Owen and William Owen, Jr., known as Passamaquoddy Outer Island. The name was changed to Campobello as a compliment to Governor Campbell of Nova Scotia.

Under the commission to Thomas Carleton appointing him Captain General and Governor in Chief of New Brunswick, the Province is "bounded on the Westward by the mouth of the River Saint Croix, by the said river to its source, and by a line drawn due North from thence to the Southern boundary of our Province of Quebec, to the Northward by the said boundary as far as the Western extremity of the Bay 'du Chaleurs, to the Eastward by the said bay and the Gulf of Saint Lawrence to the bay called Bay 'Verte, to the South by a line in the centre of the Bay of Fundy from the River Saint Croix aforesaid to the mouth of the Musquat River by the said river to its source, and from thence by a due East line across the isthmus into the Bay Verte to join the Eastern line, above described including all islands within six leagues of the coast."

(2) The Council was composed of twelve members. The following were not in the province at its first meeting: Beverly Robinson, Sr., Edward Winslow, Joshua Upham, Daniel Bliss and Gilfred Studholm. At the close of the war Beverly Robinson went to

England to lay his claims for losses before the British government. In the Confiscation Act his wife was named. She received a large estate on the Hudson from her father, Frederick Philipse. The government granted 17,000 pounds sterling, and Mr. Robinson remained in England, and died at Bath in 1792, aged 70 years. Mrs. Robinson died in 1822, aged 94 years. In 1790 their son, Beverly Robinson, Jr., of York County, was appointed to a seat in the Council.

(3) The following were the first sheriffs appointed for the different counties: St. John, William S. Oliver; York, John Murray; Sunbury, Abraham De Peyster; Queens, John Robinson; Charlotte, Thomas Wyer; Kings, Cosby Hunt; Westmorland, Ambrose Sherman; Northumberland, Benjamin Marston. William Sanford Oliver, the first sheriff of St. John, was a son of the last Lieutenant Governor of Massachusetts Bay under the Crown. In the editorial column of the *Royal Gazette*, 1787, occurs the following:

Married Thursday evening, 27th September, by Rev. George Bisset, rector of St. John, William Sanford Oliver, Esquire, High Sheriff to the City and County of St. John, to the much respected and accomplished Mrs. Catherine Menzies, late widow of Capt. Menzies, deceased.

This respected and accomplished lady was Sheriff Oliver's second wife; she died May 10th, 1803, aged 41 years. At the time of Sheriff Oliver's death, February 22nd, 1813, at the age of 62 years, he also held the office of Province Treasurer. In both offices he was succeeded by William Hazen, father of the late Hon. Robert L. Hazen.

(4) City Hall was on the east side of Germain street, between Duke and Queen streets, until the erecting of the Court House about 1797 on Market Square. The hall on Germain street was used for a Court House and Common Council Chamber. After the

removal therefrom of the courts and council it was used for Church of England services until Christmas day, 1791, and by the Methodists from that date until Christmas day, 1808, and from the latter date until 1818 by the Baptists. There was a burial ground in the rear of the building. The lot is now occupied by the residence of Mr. John McMillan.

(5) Jonathan Odell was born at Newark, New Jersey, 1737. He was educated for the medical profession, and served as surgeon in the British army. He left the service while stationed in the West Indies and went to England to prepare for Holy Orders. He was ordained deacon December 21, 1766, in the Chapel Royal by the Right Rev. Dr. Terrick, Bishop of London, and was advanced to priest's orders in January, 1767. He succeeded the Rev. Colin Campbell as rector of Burlington, and was inducted, July 26th, 1767, by His Excellency William Franklin, Governor of New Jersey. Mr. Odell was married at Trenton, May 6th, 1772, to Miss Anne De Cow. In the parish register at Burlington may be found the following: "Baptized 13th November, 1774, William Franklin, second child of Jonathan and Anne Odell." At a general meeting of the New Jersey Medical Society, at Princeton, November 8th, 1774, Mr. Odell presented himself as a candidate for admission, and being well known by many of the members of the society as a regular practitioner, and being well recommended, was without the usual mode of examination admitted unanimously a member of the society, and took his seat accordingly. Through the war Dr. Odell adhered to the Crown. In 1772 colors were presented at New York to the King's American Dragoons, when an address was delivered by the chaplain, Dr. Odell, in the presence of Prince William Henry. At the peace

he left for England in company with the Commander-in-Chief, Sir Guy Carleton. Upon the organization of the Province of New Brunswick in 1784, Dr. Odell was appointed provincial secretary, with a seat in the Council. The following is a notice of his death as published at the time: "Departed this life at Fredericton, 25th November, 1818, in the 82nd year of his age, the Hon. and Rev. Jonathan Odell, a member of His Majesty's Council for this Province." Jonathan Odell was the last of the Council appointed in 1784. His widow died in 1825, in her 86th year, leaving one son, William Franklin Odell, and three daughters, Lucy, who married Col. Rudyard, R. E., Anne, who married Charles Lee, of York County, and Mary, the eldest, who died at Maugerville, 1848, in her 76th year, unmarried. William Franklin Odell was named after the Governor of New Jersey. He studied law in the office of Ward Chipman, and in 1806 was called to the Bar, when he was appointed clerk of the Crown in the Supreme Court, and also clerk of the Common Pleas. On the resignation of his father, in 1812, of the office of provincial secretary, he was appointed by the Prince Regent to the office. Mr. W. F. Odell married Miss Newell, of Burlington, New Jersey. Their three daughters married, respectively, the Hon. Thomas Bailie, Surveyor General; Major Ruxton, 43rd Regiment; and Dr. Twining, of Halifax. Mr. W. F. Odell died December 25th, 1844, in his 69th year. The father and son for sixty years held the office of provincial secretary of New Brunswick.

William Hunter Odell, a son of the latter, was born at Fredericton, November 26, 1811, studied law and was called to the bar of New Brunswick, 1838, and to the Legislative Council in 1850. He was Postmaster General in 1865 in the government formed in oppo-

sition to Confederation; called to the Senate of Canada by Royal Proclamation in 1867, died at Halifax, N. S., July 26, 1891, aged 79 years. He was the last of the family in New Brunswick.



CHAPTER II.

ESTABLISHMENT OF COURTS.

The Royal instructions issued to Thomas Carleton conferred upon him full power and authority, with the advice and consent of his Council, to erect, constitute, and establish such and so many courts of judicature and public justice within the province, as he and they should think fit and necessary for the hearing and determining of all causes, as well criminal as civil, according to law and equity, and for awarding execution thereupon, with all reasonable and necessary powers, authorities, fees, and privileges belonging thereto. In accordance with the authority thus conferred, at a meeting held by the Governor and Council on the 27th day of November, 1784, the Supreme Court was established, and ordinance read fixing stated times for holding courts. The Supreme Court has, by commission from the Crown, all the power and jurisdiction of the three superior courts at Westminster Hall. The terms of the court are held four times in the year at Fredericton, the seat of government. Originally the Governor and Council formed a court of appeal from the decisions of the Supreme Court, which appeals were taken by writ of error. Then, as at the present day, an ultimate appeal might be made to the King in Council. If a party feeling himself aggrieved appeals to the Supreme Court of Canada and fails to succeed, he loses his appeal to the King in Council as a matter of right, though the privilege may even then be granted to him as a favor, or under

special circumstances. The courts of *Nisi Prius*, or Circuit Courts, are emanations of the Supreme Court, held before one of the judges of that court in the respective counties of the province for the purpose of trying causes in which issues have been joined, and tryable by the country. These courts are held without any special commission issued to the judge. The verdicts of the jury, or the decisions of the judge, if without a jury, are returned to the Supreme Court, where all the proceedings at the trial may, on motion, and after argument of counsel, be reviewed by the judges of that court, who consult together and give judgment upon the verdict or decision, or make such other order for new trials, or otherwise, as the justice of the cause under the circumstances under the law may appear right. Courts of *oyer* and *terminer* and general gaol delivery, although originally distinct and of peculiar origin, are, and for the greater portion, if not the whole period of our provincial history, have been but accretions of the *Nisi Prius* sittings, or Circuit Courts. In other words, the judge who presides at *Nisi Prius*, or Circuit, at the same time presides as a judge of *oyer*, etc. The gaol delivery is affected by the trial of such prisoners as are indicted, and the discharge of those, against whom no bills of indictment are found. Should a prisoner be convicted on his trial, and there be any doubtful points in his case, upon the trial judge reserving what is known as a Crown case, the execution of sentence will be respited, and the case is then brought before the full bench for argument and adjudication. The case is then determined by the court either to quash or sustain the conviction, or grant a new trial, as the circumstances may warrant. Such are the guards which our laws provide against the undue condemnation of an

innocent party. The power of granting pardon, which is wholly and solely vested in the Crown, has been styled its most valuable prerogative, and is the last resort for an unfortunate culprit whose case may present circumstances which merit favorable consideration. The first Chief Justice of the Supreme Court of New Brunswick was the Hon. George Duncan Ludlow. Judge Thomas Jones, in his "History of New York" during the revolutionary war, refers to George Duncan Ludlow as "A descendant in the direct line from the great General Ludlow, who served the parliament with such distinguished zeal in the great English rebellion in the days of the unfortunate Charles the First, and though he possesses all the virtues of his ancestor, he is a warm Episcopalian and a steady Loyalist." The first of the family in America was Gabriel Ludlow, of Castle Cavy, England. In 1694 he arrived at New York, and three years later married a daughter of the Rev. Joseph Hamner, D. D., the first Church of England clergyman in New York. His son, Gabriel, an opulent merchant, married Miss Duncan. They had two sons, Gabriel G. and George Duncan Ludlow. The latter in early life was engaged in business as an apothecary, but soon abandoned this for the law, in the practise of which he met with immediate success. He married a daughter of Thomas Duncan, a New York merchant. The residence of Mr. Duncan took fire at a time when Mrs. Duncan and the three children were in the third story. Before the fire was discovered, the stairs were in flames, and escape was cut off. As the ladders were not long enough to reach the third story windows, beds were placed on the ground, and Mrs Duncan was entreated to let the children drop and jump herself. She hesitated and all perished. The sole survivors of the



Geo D Ludlow

First Chief Justice of the Province of New Brunswick, from a miniature
painted on ivory by his neice, now in possession of
J. Morris Robinson, Esquire.

family were Mr. Duncan, and Frances, the eldest daughter, who at the time of the fire was away from home. A year later she married George Duncan Ludlow, and Mr. Duncan lived with them till his death.

Governor Colden, in 1769, appointed Mr. Ludlow to the Bench of the Supreme Court of New York, having the year before appointed him to a seat in the Council. When Chief Justice Horsmander died, in 1778, the expectation was that Judge Ludlow would be Chief Justice. Governor Robinson, however, appointed William Smith, one of the Bar, to the vacant seat, and thereupon Judge Ludlow called on the Governor and resigned his seat. This to him was decidedly embarrassing, for the judge not only stood high with the Bar, but had a large circle of influential friends. As the office of Master of the Rolls, with three hundred pounds salary, and fees in addition, was vacant, also the post of superintendent of police at Long Island, with a salary of three hundred and sixty guineas and large fees, Governor Robinson offered to procure these offices for Judge Ludlow, they being of much more value than the office of Chief Justice. The following proclamation and notices were issued upon the appointments being made :

PROCLAMATION.

The situation of Long Island, rendering it necessary to establish the means of administering justice among the inhabitants, without subjecting them to the interruption and delays attending an application to this City, and it being Sir Henry Clinton's desire, the people may have all the advantages of Civil Government, I have with his approbation appointed George Duncan Ludlow Master of the Rolls for the Province and Superintendent of Police for Long Island, with powers on principles of equity, to hear and determine con-

troversies, maintain peace and good order until Civil Government in all its forms can take place; and all officers of Long Island are required to aid the said Magistrate and his associates in their office and obey such orders as they shall from time to time receive for the effectual execution of their decrees.

JAMES ROBERTSON,
Lieutenant General.

New York, July 12th, 1780.

This proclamation was followed by the following:

NOTICE.

The office for regulating the Police on Long Island, will be immediately opened in the town of Jamaica, and regular attendance given for hearing and determining controversies on the Tuesdays and Wednesdays every week.

GEORGE DUNCAN LUDLOW,
*Master of the Rolls and Superintendent
of Police, Long Island.*

Jamaica, Long Island, July 19th, 1780.

At this time there was a large trade between New York and the New England provinces, for which permits were required, the perquisites were large and were divided between Governor Robinson, Lieutenant Governor Elliot and Judge Ludlow.

William Smith, who became Chief Justice when Ludlow expected to get that position, was a graduate of Yale College, where he greatly distinguished himself, and at the Bar held a first place. He was the last Chief Justice of New York under the Crown, and one of the few Loyalists not in the Confiscation Act. He made a will a few days before the evacuation of New York, that it might be the will of a resident, and for greater safety executed it in duplicate. He bequeathed to his wife and four children three thousand pounds each, and devised the remainder of his estate, real and

personal, to them in five equal parts. In 1753 he married one of the Livingstone family, most of whom took sides against the Crown. Through his wife he received a large estate. On the evacuation of New York he left with Sir Guy Carleton, the Commander-in-Chief, and landed at Plymouth, England, January 10th, 1784. He was appointed by the British government Chief Justice of Lower Canada, and arrived there in the frigate "Thistle" with Sir Guy Carleton, then the Governor General, afterwards raised to the peerage as Lord Dorchester. He died at Quebec, December 6th, 1793, aged 65 years. The Duke of Kent, father of Queen Victoria, was one of the attendants at his funeral. Jonathan Sewell, Jr., New Brunswick's first law student, married a daughter of Chief Justice Smith. On the evacuation of New York by the British in the fall of 1783, George Duncan Ludlow, with other leading Loyalists, embarked for England, and on the organization of the Province of New Brunswick he was appointed Chief Justice, being the first Chief Justice of the province. He and his brother Gabriel G. Ludlow, a colonel in one of the loyal American regiments, were at the time made members of the Council. The salary of the Chief Justice was fixed at five hundred pounds, and that of each of the *puisnes* at three hundred pounds sterling. The first Supreme Court Bench of New Brunswick constituted as follows:

CHIEF JUSTICE.

Hon. George Duncan Ludlow.

PUISNE JUDGES.

Hon. James Putnam, Hon. Isaac Allen, Hon. Joshua Upham.

Chief Justice Ludlow, on his arrival in New Brunswick, resided in Carleton, on the western side of the

harbor of St. John. On the removal in 1788 of the seat of government to Fredericton, he obtained a large tract of land on the river St. John, five miles above the capital. The Supreme Court was opened for the first time in New Brunswick at Parr Town (1) (now St. John) February 1st, 1785, in the building on Germain street occupied for Church of England services; Chief Justice Ludlow and Judge Putnam presiding.

Proclamation was made and the court was opened in due form, when the commission under the great seal of the province was openly read, appointing the Hon. George Duncan Ludlow and the Hon. James Putnam, second Justice, with Ward Chipman as acting Attorney General. Colin Campbell's commission as clerk of the court was also read, and he was duly sworn (2). On the same day the following gentlemen were admitted, attorneys and barristers, viz.:

NAME.	WHEN ADMITTED.	DIED.
Bartholomew Crannell, ...	February, 1785	1790
Elias Hardy, ...	" "	1798
Amos Botsford, ...	" "	1812
Joseph Garnett, ...	" "	1801
Colin Campbell, ...	" "	1801
Samuel Denny Street, ...	" "	1830
William Wyly, ...	" "	1828
Timothy Wetmore, ...	" "	1820
Ward Chipman, ...	" "	1824
Ross Curry, ...	May, "	1790
Jonathan Bliss, ...	June, "	1822

On the organization of the Province of New Brunswick, the British government appointed Samson Blowers, a Massachusetts Loyalist, Attorney General, and Ward Chipman, Solicitor General. Mr. Blowers, however, never assumed the office, in consequence of being advanced to the Attorney Generalship of Nova

Scotia, which had become vacant. The following letters are of interest in this connection :

HALIFAX, January 14, 1785.

My Dear Chipman :

You will have heard before this reaches you, that Governor Parr has made me Attorney General here. I am now in the full execution of the office. The warrant has not yet arrived, but I have letters of 4th September acquainting me of my confirmation. Nothing is said of my seccessor in New Brunswick, but as Matthew's (3) warrant for Louisburg was forwarded by the same opportunity, I think it possible he is not the man. I wish you may be. In the meantime would it not be well to get an order from your Governor and Council for you to do the duty, and let it be known you are doing it.

And now, Dear Chipman, how are you settled? Have you comfortable quarters, and are you contented? Do you find business enough? Can I be of service to you? Present my compliments to Mr. Odell, let me be remembered to the Chief Justice and his brethren. Write me often and believe always yours truly. The ladies with me desire compliments.

Yours,

S. S. BLOWERS.

WAARD CHIPMAN, ESQ.

Jonathan Bliss, however, received the appointment, as is shown by the following letter :

BRISTOL, England,

February 5, 1785.

My Dear Chipman :

I have just time to acknowledge receipt of your letters of 6th and 16th of November. Jonathan Bliss, who I suppose you are apprised is appointed Attorney General, is now going to London to prepare for his embarkation for New Brunswick in April next. I intend to send Jonathan out under his care, if, in the meantime, I receive no letter of discouragement from you. It has been a strange business about your Attorney Generalship. Bliss knew nothing of his appointment till he saw it in the Court Register.

Yours,

JONATHAN SEWELL.

WARD CHIPMAN, ESQ.

The first manslaughter at Parr Town was that of a negro named John Mozely, by his wife Nancy, who was indicted for murder, but found guilty of the former crime. This being the first record of a serious crime in the province, the proceedings possessed so much interest that it is deemed desirable to print them at length. The warrant to apprehend Nancy Mozely reads as follows:

To the Sheriff of the County of Sunbury, or his Deputy, or either of Constables of the Town of Parr, GREETING:—

You are hereby commanded in His Majesty's name, to take the body of Nancy Mozely, a black woman, and her bring before me, or some other lawful authority, to answer to a complaint laid to her charge by Richard Cranker and Richard Wheeler for the murder of her husband, John Mozely, that she may be dealt with as the law directs. Fail not at your peril.

Given under my hand and seal this 6th day of October, 1784.

GEORGE LEONARD,
Justice of the Peace.

And indorsed on the said warrant was the following return:

Served Nancy Mozely with this warrant, October 6th, 1784.

DANIEL KEEFE, *Constable.*

The witnesses named below entered into the following recognizance to appear and give evidence on the trial:

County of Sunbury,

RICHARD WHEELER,
JOHN WALKER,
JANE WALKER.

You, Richard Wheeler, do acknowledge yourself to owe to our Sovereign Lord the King, the sum of One Hundred Pounds, and you John Walker acknowledge yourself to owe to our Sovereign Lord the King, the sum of Fifty Pounds, to be levied on your respective goods and chattels, lands and

tenements, for the use of His Majesty, his seirs and successors, if default shall be made in the conditions hereafter written.

The condition of this recognizance is such, that if you, and each of you, shall personally appear before the Justices of the Supreme Court, to be held for the Sunbury County, and shall then and there answer to such questions which shall be then asked you by the Supreme Court, and that you doth not depart without leave from the Court, then this recognizance to be void or else to remain in full force.

GEORGE LEONARD,

Justice of the Peace.

Province of Nova Scotia.

Parr, October 6th, 1784.

The following is the report of the medical man who made the post mortem examination:

SIR,—Agreeable to your request, I examined the black man's head. I am perfectly satisfied he was murdered. After examining where the fork perforated temporal bones of the skull, I sawed off the arch of the head and found the brain everywhere impacted with matter. The symptoms before death were also very obvious. All the jury were spectators.

Your servant,

SAMUEL MOORE.

GEO. LEONARD, ESQUIRE.

The coroner's jury returned the following verdict:

We, the jury being qualified and duly sworn to examine the body of John Mozely, found dead, from the wounds of a fork in the head given him by his wife, accordingly we have examined the said body, and by the evidence sworn, find that the fork was the occasion of his death.

AMOS SHEFFIELD, FOREMAN.

John Dan, William Sypher, William Crawford, Stephen Baxter, Henry Dickinson, William Scoby, John Kelsey, Hugh Brown, Isaac Ingham, John Miller, Peter Anderson.

Parr Town, 6th October, 1784.

In consequence of the commission of this crime and prosecution for the same, it became necessary to summon a grand jury, the first in the history of the province. The following constituted the grand jury, viz.:

Richard Lightfoot, John Hazen, John Boggs, John Kirk, John Smith, Oliver Arnold, Francis DeVeber, Caleb Howe, Daniel Melville, John Camp, Henry Thomas, John Ryan, William Harding, Thomas Mallard, Richard Bonsall, John Colville, James Ketcham, Luke D. Thornton, Isaac Bell.

The following is the presentment made by the grand jury to the court:

Province of New Brunswick, Hilary Term, in the twenty-fifth year of the reign of King George the Third. The jurors for our Lord the King upon their oaths present:—

That Nancy Mozely, of Parr Town, in the County of Sunbury, widow, late wife of John Mozely, late of the same place, labourer, deceased, not having the fear of God before her eyes, but being moved and seduced by the instigation of the devil and of her malice aforethought, contriving and intending him, the said John Mozely, her said late husband, to deprive of his life and him traitoursly to kill and murder on the twenty-seventh day of September, in the twenty-fourth year of the reign of our Sovereign Lord King George the Third, now King of Great Britain, and with force of arms at Parr Town aforesaid, in the County aforesaid, in and upon the said John Mozely, her said husband, against the peace of God and of our said Lord the King, then and there being feloniously, wilfully, and of her malice aforethought, did make an assault, and that the said Nancy Mozely, with a certain iron fork of the value of sixpence, which the said Nancy Mozely then and there had and held in her right hand, struck him, the said John Mozely, in and upon the head near unto the temple, and that the said John Mozely from the twenty-ninth day of October, in the same year, at the town of Parr aforesaid, in the County aforesaid did languish, and of the mortal wound aforesaid on their oaths do say, that the said Nancy Mozely, him the said John Mozely, her said husband, in manner and by the means aforesaid, feloniously, traitorously, wilfully, and of her malice aforethought, did kill and murder against the peace of our Lord and King, his Crown and dignity.

The following petit jury was called and sworn to try the charge in the indictment, viz.:

Frederick Devoe, Casper Doherty, Forbes Newton, James Picket, Jesse Marchant, John Wiggins, Abel Flewelling, Samuel Tilley, John Cooke, George Wilson, James Souvenir, Jeremiah Worden.

The prisoner, Nancy Mozely, was brought into court and placed at the Bar, when she was found guilty of manslaughter. The day following she was again placed at the Bar, when she prayed the benefit of clergy, which, being granted, she was sentenced to be branded in open court with the letter "M" in the brawn of her left thumb and was then discharged.

Benefit of clergy had its origin in the immunity ecclesiastics claimed and obtained in the days of ignorance and superstition. They claimed exemption on Divine authority, "touch not mine annointed," from being punished in civil courts. Anciently the privilege was only allowed to clerics, but afterwards every person who could read was accounted a cleric or clericus, and allowed the benefit of clergy, though not in holy orders. The mode in which the test of reading was applied was on conviction the felon demanded his clergy, whereupon a book, commonly a psalter, was put into his hands, which he was required to read. The forty-first psalm was generally selected, and the The fifty-first psalm was generally selected, and the considered "the neck verse" par excellence. The judge demanded of the bishop's commissary, who was present, "*Legit ut Clericus?*" And upon his answer depended the fate of the prisoner. If the answer was "*Non legit*," he suffered the punishment due to his offence. Dramatists have referred to the "Neck verse." Thus in King Lear: "Madame, I hope your Grace will stand between me and the neck verse if I

am called in question for opening the King's letters." When learning became more general, and the ability to read was no longer a proof of being in holy orders, it was found that many laymen were admitted to the benefit of clergy; therefore by statute in the reign of Henry the Seventh, a distinction was made between lay scholars and real clerks or clergymen in order, the laymen being allowed the benefit of clergy once, and they were directed to be burnt with a hot iron in the brawn of the left thumb. By a statute passed in the reign of Queen Anne, the benefit of clergy was granted to all who were entitled to ask it, whether they could read or not, it being considered that education and learning were no extenuation of guilt, but the reverse; and therefore persons convicted of manslaughter, grand larceny and other offences, were asked what they had to say, why judgment should not be pronounced against them, and if in answer they prayed the benefit of clergy, it was granted them when the crime was clergyable.

The Legislature of New Brunswick in 1789 enacted the following:

Whereas the punishment of burning in the hand, when any person is convicted of felony without the benefit of clergy, is often disregarded and ineffectual;

Be it enacted by the Lieutenant Governor, Council and Assembly:—

That from and after the passing of this Act, when any person shall be lawfully convicted of any felony within the benefit of clergy, for which he or she may be liable to be burned or marked in the brawn of the left thumb, it shall and may be lawful for the Court, if thought fit, instead of such burning or marking, to impose on such offender such pecuniary fine as to the Court shall seem meet, otherwise it shall be proper instead of burning and marking in any case aforesaid, except in case of manslaughter, to order and adjudge that such offender shall once or oftener, but not more than three times, be either publicly or privately whipped.

The following letter from the Chief Justice evinces a disposition on his part to consider carefully the condition of the infant colony, and to prevent the charges of members of the legal profession assuming such proportions as to overburden litigants, or militate against the administration of justice. In his opinion fees should be reasonable, and in the then condition of the province to be partly determinable by the ability of the colonists to pay.

FREDERICTON, 29 November, 1787.

SIR,—Before receipt of your letter, Judge Putnam wrote me on the subject of Mr. Crannell's bill of costs for a *Nisi Prius* cause tried at St. John, and as it was to commence a set of precedents, desired the opinion of his brethren, so you must have misunderstood his real objection, which was not against taxing costs in such cases, but against allowing for services, which do not appear to have been performed. Judge Allen and myself have consulted once and again on the subject proposed by Judge Putnam for our consideration, and I now send him our opinion. Your several bills are taxed conformably and are in consequence reduced nearly one-half. Hard as this may appear, it regularly follows from the liberal allowance of the "Fee Table" compared with those of other colonies, and the obligation we are under of giving it a right construction. Taxable costs are, you know, in all causes far short of expenses, and do not measure the reward of counsel or attorney. At the commencements of Circuit Courts, especially in this province, peculiar difficulties must attend the practitioner, but they will gradually lessen as the population increases, and the wealth, as well as the litigation, of the inhabitants, multiply. The present "Fee Table" is calculated for a people further advanced in cultivation, and perhaps abler to pay for law-fiction. Should we set out with the adoption of such a system, the present generation would not find wherewith to purchase justice. I have ventured to speak thus freely, because you seemed to have supposed the whole a matter of course, and there could not be two opinions on the subject; we are on the other hand to consider the cases as of the first importance.

Your most humble servant,

WARD CHIPMAN, ESQ.

GEORGE D. LUDLOW.

While the letter of Chief Justice Ludlow may not have been pleasant reading to the lawyers, there can be little doubt that his reasoning, as applied to existing circumstances, was sound. On the death of Bartholomew Crannell, (4) there were two applicants for the office of clerk vacated by his death, of whom the one was just entering on the activities of life, while the other was not only advanced in years, but was high in his profession. These were Gabriel V. Ludlow, a nephew of the Chief Justice, and Elias Hardy. (5.) The latter received the appointment, as appears from the following letter:

ST. JOHN, N. B., 22nd June, 1790.

DEAR JONATHAN:—

Gab. Ludlow has lost the Clerk's office in a strange manner, it is considered a curious circumstance by all the whigs here, he had made application to the Chief Justice a long time ago, but as the demon of ill-luck would have it, he never mentioned it to the Governor, till the latter showed him an application from Hardy, which was considered by the Governor as the first application. The Chief Justice was excessively urgent for Gab., the Governor was as strenuous for Hardy and appointed him. It is supposed by some the whole is political business, but I am convinced what chiefly actuated the Governor was his strict adherence to his word, for I am told he has declared that the first applicant for any vacant office, if the person applying is capable and not immoral, shall be appointed; in consequence of the above Gab. in the first transport of his chagrin felt himself somewhat disappointed, and was turning his eyes round to find where he should go next. Montreal presented itself with all the charms and attractions of a Court of King's Bench. I had some serious conversation with him; the result was that he or I should write you for your opinion. I wish you to think seriously of the business and give us your sentiments by next mail.

Your brother,

STEPHEN SEWELL.

JONATHAN SEWELL, JR.

Quebec, Lower Canada.

Gabriel V. Ludlow shortly afterward removed to New York, which he made his future home. He wrote Ward Chipman, in whose office with the two Sewells he studied law :

The practice of the law is much more laborious business here than with you, as we do business frequently from five in the morning till late at night. The fees are very low and proceedings very lengthy. However, the practitioner makes it up in Court fees. The number of the Bar exceeds all bounds, notwithstanding which the most eminent make, I imagine, nearly 2,000 pounds a year.

Mr. Ludlow was a son of the Hon. Gabriel G. Ludlow, Mayor of St. John; he died at New York, April 30th, 1825, aged 57 years. At the Circuit Court Sunbury County, September, 1798, Chief Justice Ludlow presiding, John Windson, a black man, was placed on his trial, charged with burglary, then a capital offence, without the benefit of clergy. The prosecutor was Elijah Miles. The prisoner fled, and on his arrest money to the value of three pounds fifteen shillings was found on his person. While the jury acquitted the prisoner, the court made the following order :

The Court being satisfied that two pounds fifteen shillings of the money found on the prisoner, was the property of Elijah Miles, ordered the same to be taken by him (Miles), and that the remaining twenty shillings be distributed to discharge in part the fees of prosecution.

In 1788, the Legislature met for the first time at St. Ann's Point, named Frederick Town, having been chosen by Governor Carleton for the seat of government. For over twelve years the Legislature met in the building erected for the King's provision store, Queen street, yet standing, between the Queen Hotel and St. John street, and for years occupied for the Church of England services. On the eighteenth day

of July, 1788, the year of the transfer of the seat of government to Fredericton, His Excellency opened the Legislature with the following speech:

Gentlemen of the Council and Gentlemen of the Assembly:—

In calling you together for the first time after the removal of the seat of government to this place, I have endeavoured to consult the general convenience, and deferred a meeting of the Legislature until the state of our temporary laws rendered it necessary, and the season of the year lessened the difficulty of your attendance upon your public duty.

Gentlemen of the Assembly:—

The import law will require your attention, not only for a renewal, but for the introduction of such alterations as may be found requisite to give it greater effect. The expenses attending the exploring and surveying of the road from Oro-mosto to St. John have been paid, and the remainder of the monies appropriated by vote of your House, for those services have been applied to the exploring of the road from Fredericton to St. Andrews, as will appear by the account of the commissioners to be laid before you.

Gentlemen of the Council and Gentlemen of the Assembly:—

The prospects of a happy continuation of public tranquility and the flourishing state of the province, leave me little to recommend to your consideration. Our people are industriously occupied in making permanent establishments, and the few criminal cases in so extensive a settlement are a proof not only of their improving manners, but of the success attending their honest exertions.

This session occupied only nine days, when His Excellency closed the Legislature with the following speech:

Gentlemen of the Council and Gentlemen of the Assembly:—

The business before you now being finished, I have the satisfaction to close the present session in full consequence of your persevering endeavours, both by a vigilant exertion of such authority as you may be invested with, and by the influence of your example, among all ranks of the people, to strengthen and confirm that spirit of industry, and those habits of temperance and good order, that are so essential to the growth and prosperity of this infant colony.



PUTNAM TOMB, OLD BURYING GROUND, ST. JOHN, N. B.

Chief Justice Ludlow died at his home, Springhill, on the river St. John, a few miles above Fredericton, November 13, 1808, in his seventy-fifth year, holding a seat on the Bench and in His Majesty's Council twenty four years. His brother, the Hon. Gabriel G. Ludlow, died the same year. On a tablet in the old graveyard in Carleton, St. John, is the following:

In
Memory
of the

HONORABLE GABRIEL G. LUDLOW, ESQUIRE
Late President and Commander-in-Chief
of this Province.

Born 10th April, 1736,
Died 12th February, 1808.

Sacred
To the memory of

ANN LUDLOW
Relict of the late Gabriel G. Ludlow,
Born 11th October, 1743,
Died 13th December, 1822.

Chief Justice Ludlow left a widow, one son and two daughters. Frances, the eldest, married Richard Harrison, a member of the New York Bar; Elizabeth was the wife of the Hon. John Robinson, son of Col. Beverly Robinson, a merchant of St. John, and at the time of his death, 1828, Mayor of the city, Province Treasurer, and a member of His Majesty's Council. Mrs. Robinson died in France in 1826. George Ludlow, son of the Chief Justice, married in the Island of Nevis, West Indies, and settled in Paris, where he resided till his death. The widow of the Chief Justice, after his death, lived with her son-in-law in St. John, where she died in 1825, and was there buried

in the "old graveyard," the following being inscribed on the memorial stone placed there above her grave:

Sacred
To the memory of
FRANCES
Daughter of THOMAS DUNCAN, Esq.
And relict of the Honorable George D. Ludlow
Late Chief Justice of this Province,
Died in this City
On the 16th October, 1825,
In the 87th year of her age.
Resurgam.

The following advertisements, clipped from newspapers, relate to the winding up of the estate of the first Chief Justice of New Brunswick, and thence are not without interest:

THE OLD HOMESTEAD FOR SALE.

That valuable farm and elegant seat called Spring Hill, formerly the residence of the Honorable Chief Justice Ludlow, situated on the River St. John, five miles above Fredericton, containing fifteen hundred acres of excellent land, part of it in orchard, mowing ground and arable land, the remainder in fine timber of maple, birch, elm, butter-nut, etc., etc. There is on it a large convenient dwelling-house with barns, coach-house, dairy, etc., etc. Fine springs of water in almost every field. Also two valuable Island lots near the farm.

NOTICE.

All persons having demands against the estate of the Hon. George D. Ludlow, deceased, are requested to present their accounts for payment within six months of the date hereof; and all persons indebted to said estate are requested to make immediate payment to Peter Fraser, Esquire, at Fredericton, or to

FRANCES LUDLOW, *Executrix*
JOHN ROBINSON, *Executor.*

St. John, N. B., 10th February, 1809.

NOTES.

1. Parr Town included that portion of the City of St. John south of Union street. It was named after John Parr, Governor of Nova Scotia. He died at Government House, Halifax, November 25th, 1791, in his 66th year, and was buried there beneath St. Paul's church.

2. Colin Campbell was lieutenant in De Lancy's Brigade, 2nd Battalion. His wife was a daughter of the Rev. Dr. Samuel Seabury, the first bishop of the Protestant Episcopal church in the United States. Of him Commissary General Townsend, Halifax, wrote Ward Chipman, April, 1785:

I enclose two letters from Polly Seabury for her sister Mrs. Campbell. You will soon see her father, a very worthy good man. How his Scotch ordination will be relished in Connecticut is uncertain; he may expect some opposition.

Bishop Seabury, during the Revolution, remained true to the Crown, and on one occasion was taken prisoner and received very rough treatment at the hands of his captors. His wife and daughter, for remonstrating against the treatment accorded to Dr. Seabury, were also insulted and rudely treated. Bishop Seabury was born at Grotten, Conn., November 30th, 1729. Graduated at Yale College 1748; studied medicine and theology in Scotland; was ordained a deacon and priest of the Church of England at London in 1753; was at one time chaplain of a Loyalist regiment. Having been appointed bishop of Connecticut, he proceeded to England for consecration in 1784, but finding some difficulty in obtaining his object, no doubt through the feeling engendered by the American Revolution, he was consecrated bishop by three Scottish prelates at Aberdeen, November 14th, 1784. He returned to the United States by

way of Halifax, and went to St. John by the way of Annapolis. He remained in St. John several weeks doing clerical duty. Colin Campbell died at Maugerville, River St. John, where he went for his health. Jonathan Odell, of Fredericton, who succeeded Mr. Campbell's father as rector of Burlington, New Jersey, visited him during his illness, and with Mrs. Odell was present at the funeral.

Colin Campbell

3. David Matthews was at one time judge of the Court of Police and mayor of New York. After the war he went to the Island of Cape Breton, and was President of the Council and Commander-in-Chief of that colony.

4. Bartholomew Crannell was the first to be admitted to the Bar of New Brunswick, and being the eldest was called Father Crannell. He was appointed clerk of the Common Council at the organization of the City of St. John, also clerk of the Sessions of the Peace, and Judge of Probates. He was born at Poughkeepsie, on the Hudson, in 1721. In 1744 he married a daughter of Peter Van Kleep. Mr. Crannell died May 24th, 1790, aged 69 years, being the first death among the members of the Bar. He left two daughters, one the wife of Thomas Lawton, merchant, St. John; the other the wife of the Rev. John Beardsley, chaplain in Col. Beverly Robinson's regiment, the first clergyman of the Church of England who officiated at Parr Town.

B. Crannell

5. Elias Hardy, the son of an English clergyman, was born in Surrey, England, in 1744, and was admitted an attorney and solicitor in the courts at Westminster Hall. Disliking the confinement incident to that branch of his profession, or for some other reason, he removed to America to enter upon the practice of his profession. He resided in New York during the whole period of the Revolutionary conquest, from 1776 to 1783, when he left for England. The following advertisement appeared in one of the New York papers before his removal from that city:

As the subscribers intend in the course of a few weeks to leave this City, they inform their friends, and the public in general, that they will transact such business in London as may be committed to their management, with fidelity and dispatch.

ELIAS HARDY,
JOHN L. C. ROOME.

New York, October 14, 1783.

Mr. Hardy is already admitted in the Court of King's Bench and Chancery, and proposes resuming the practice of the law in England.

Mr. Hardy's residence in England was short, for in 1784 he was in Parr Town following his profession. At the first general election in 1785 he was returned as one of the representatives for the County of Northumberland, and at the second election he was returned for the City of St. John. In New Brunswick he was known as the London lawyer, and occupied an eminent position in his profession. He acted as counsel for the defendant in 1790 in the somewhat celebrated slander trial of Benedict Arnold *vs.* Monson Hait. Attorney General Bliss and Solicitor General Chipman were counsel for the plaintiff. In the issue

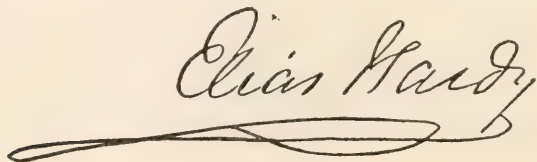
of the *St. John Gazette*, newspaper of January 1, 1799, appears the following notice :

SACRED TO FRIENDSHIP

Memento Mori

Tuesday, the 25th of November, 1798, died at his residence, King Street, St. John, in the fifty-fourth year of his age, after a long illness, which he bore with great fortitude, Elias Hardy, Esquire, Councillor and Attorney-at-Law, Judge of Probates for the City and County of St. John, Clerk of the Court of Common Pleas and General Sessions of the Peace for the City and County of St. John, and Clerk of the Court of Chancery. Mr. Hardy always observed an invincible loyalty to his King and to the British Constitution. He possessed great abilities as a lawyer and very striking talents as a public speaker. He has left a wife, and four fine children to lament the loss of an affectionate husband and indulgent parent. He formed but few friendships; but in those he was always sincere, and the brilliancy of his wit and great good humour made him the life of every circle of which he formed a part.

In the inventory taken after his death, his library was appraised at the sum of eighteen pounds. Mr. Hardy married a daughter of Dr. Peter Huggerford, a surgeon in the regiment raised by Col. Beverly Robinson. Dr. Huggerford drew a lot on Charlotte street, opposite King Square. He, like many other Loyalists, early returned to New York, after the conclusion of the peace. Mr. Hardy's office and residence was on the south side of King street, the third above Germain street. His widow, some years after his death, also returned with her family to New York.

A handwritten signature in cursive script, reading "Elias Hardy". The signature is written in dark ink and is followed by a long, horizontal, wavy flourish that extends to the left and underlines the name.

CHAPTER III.

HON. JAMES PUTNAM.

The Honorable Judge Putnam was born in 1725 in Danvers, then a part of Salem, in the State of Massachusetts. He graduated at Harvard University in 1746, and studied law with Attorney General Trowbridge at Cambridge. In 1754 he married Elizabeth, daughter of the Honorable John Chandler, of Worcester. John Adams, second President of the United States, studied law in the office of Mr. Putnam, and in his autobiography thus refers to his experience in this connection: "I entertained many thoughts of becoming a physician, but law attracted my attention more and more. As I attended the courts where I heard Worthington, Hawley, Trowbridge, Putnam, and others I felt irresistibly impelled to make some effort to accomplish my wishes. I made a visit to Mr. Putnam and offered myself to him. He received me with politeness and even kindness, took a few days to consider of it, then informed me that Mrs. Putnam had consented I should board in the house and pay for my lodging one hundred dollars a year when I should find it convenient. I accepted the proposal and immediately took possession of his office. His library was not large, but he had all the most essential law books. Immediately after I entered, he sent to England for a handsome set of law books and Bacon's works." Mr. Adams, on finishing his studies, which extended over two years, was admitted to the Bar, and when asked to remain at Worcester for the practice of his profession, replied: "The Chandlers were worthy people, and discharged the duties of their

office well. I have no desire to set myself in opposition to them, especially Mr. Putnam, who had married a beautiful daughter of that family, and had treated me with civility and kindness." Mr. Putnam early attained eminence as a well read lawyer, and as one skilful as a pleader and safe in counsel. Judge Parsons described him as the best lawyer in America, certainly a very high encomium. During the exciting controversies preceding the Revolution, Mr. Putnam took the lead, and threw the whole weight and influence of his reputation and character as an eloquent advocate on the side of the Crown. Numbers of the Loyalists on the evacuation of Boston in March, 1776, went to England. The troops embarked for Halifax, Nova Scotia, and sailed from there to New York, and many of the principal inhabitants, including Mr. Putnam, accompanied them. From Halifax he writes to Jonathan Sewell a letter which gives an idea of the writer as one possessing courage and cheerfulness in an unusual degree. Having lost nearly all his property, he seems to have had no great fear for the future, and notwithstanding his circumstances and the uncertain future, continues a devoted servant of the King and an ardent believer in the ultimate triumph of the Royal cause. The following is the letter:

HALIFAX, 23rd May, 1776.

MY DEAR OLD FRIEND,—

What shall I say? What shall I tell you? That the troops have left Boston, that General Howe and the army are at Halifax, that I and my family are here also. Wonderful news! but not more strange than true. I shall say nothing of my particulars that happened last winter at Boston. The scarcity of fuel, provisions, and the excessive price of them, the plenty of shot and shell with which the rebels for a time supplied the town. There was some small danger, but faith there was a kind of diversion in hearing the shot whirl over our house at night, but not when they entered one's

house without leave as one 24- pounder did mine. We have all had the small pox, and got over that, too. Where we shall go next, cannot tell. If had not any family with me to take care of, I would follow the army. I can't be contented here during the winter. I hope we shall be able to get back to New England. But how are we to live and support our families? If there was any fund. I have no warrant by which to draw the small salary that has been allowed the Attorney General. The one hundred and fifty pounds, tho. it will be serviceable, will by no means support my family, and therefore I hope I shall be allowed more; for now I have nothing.

What furniture I attempted to bring from Boston with our provisions, our family linen, and some of our wearing apparel which for want of room in the ship we came in, was put on board another, worth one hundred and fifty pounds sterling, is fallen into the hands of the Rebels. By heaven 'tis disagreeable. But I am not discouraged. I shall remain on this continent as long as I can live here, or entertain any prospects of subduing the Rebels. After that I must run away if I can. It can't come to this, for they must, they shall be beat. They shall submit and own they have abused the mildest government and most gracious sovereign that ever existed.

I will trouble you no more, but to tell you, I am your most humble servant, and that my name is

A handwritten signature in cursive script, reading "James Putnam". The signature is written in dark ink and is centered below the text of the letter.

JONATHAN SEWELL, ESQ.,
Bristol, England.

After remaining a short time at Halifax Mr. Putnam went with his family to New York and entered the military service.

The Massachusetts Legislature passed an Act in 1778 to prevent the return to Massachusetts of John Chandler, James Putnam, William Paine, John Murray and others who had left the State and joined the enemy, which provided that should any of them return

they should be transported back into some place within the Dominion of the King of Great Britain, and if they should voluntarily return a second time, they should suffer death without the benefit of clergy.

Mr. Putnam, after remaining a few years in New York, went to England, whence he wrote the following letter to his brother, Dr. Putnam, in Massachusetts :

DEAR BROTHER,—

LONDON, June 1st, 1780.

It is so long since you have heard from me, especially by letter, that you have perhaps forgot me. I had my reason for not writing to you while I was in America. But as I am in England it can do you no harm to be informed that I am alive and well. I arrived at Plymouth, England, the 22nd of January last, and rode from thence up to London, where we arrived the 29th of the same month. My wife and daughter came over with me. My two sons I left in New York in business. Our passage from New York here was thirty days, very blowing, boisterous weather, and we were the first ship that arrived of between ninety and one hundred sail that left New York together under convoy.

Your most affectionate Brother,

JAMES PUTNAM.

DR. EBENEZER PUTNAM,

Worcester, Mass.

On the British Government's determination to form a new Province out of a portion of Nova Scotia, Mr. Putnam sought the office of Chief Justice. As it was expected General Fox would be the governor, he wrote the following to a friend :

LONDON, 1st April, 1784.

DANIEL MURRAY, ESQ.,

Dear Sir,—As I have no acquaintance with Col. Fox, I cannot with propriety apply to him except through a friend. You knew me well in America, are able to judge of the reasonableness of my claims and expectation, of being provided for by this government. You had a general knowledge of my estate in Massachusetts, being of the same profession and practising in the same courts, you pretty well understand the extent of mine and my general reputation.

From the general knowledge you have of my affairs, I conclude you will not be induced to think I have exceeded the truth when I inform you that according to my best estimate I could form of my real and personal estate in the year 1775 when I was forced to leave it, was worth about eleven thousand pounds sterling. That according to the best judgment I can now form, the profits of my profession exceeded eight hundred pounds per annum, and that taken altogether, that is including real and personal estate, the income of both with the annual profits to this time, I have lost by the Rebellion above twenty-one thousand pounds sterling, and so my claim stands stated in my schedule before the commissioner, which I expect to be able to prove.

My hopes of success being founded on my profession, my reputation, my loyalty, losses, etc., may I not reasonably expect to obtain the Chief Justiceship of the Supreme Court in Nova Scotia or in the new province, of which I hear Col. Fox may be governor, and which I hope may be made agreeable to him to accept of, as I have heard from many who have had the honour of being acquainted with him, so much in favour of his understanding, integrity and honourable disposition towards the suffering Loyalists. If I am any judge of my own reputation in my profession, and the rank I held in it as Attorney General of the Province of Massachusetts Bay, and the sacrifice I have made for this government, I think I may hope to obtain the appointment alluded to. If any person from Massachusetts has a fairer claim for this than I have, I am not sensible of it. I therefore wish to state my claims fairly to Col. Fox, and if you can with propriety, desire his interest for me, I beg you to forgive this liberty, and that you will believe me with every sentiment of esteem and respect. If I cannot obtain this office in either of these provinces, I don't know I should refuse the second place on the Bench, provided the salary is sufficient to afford a decent and proper support for my family. Indeed any proper office that would afford me support, that I could accept and execute with propriety and honour, would induce me to go abroad to that new country rather than remain idle here.

Your most humble servant,

JAMES PUTNAM.

DANIEL MURRAY, ESQ.

Mr. Murray, in compliance with his friend's request, wrote to Col. Fox in the following terms:

LONDON, 20th April, 1874.

SIR,—

The enclosed from Col. Putnam, late Attorney General of Massachusetts Bay, a gentleman of large property in that Province, of established reputation as a lawyer, and to whom I am under particular obligation, having been bred to the same profession under his immediate tuition, and having lived several years in his family, being addressed to me, I cannot resist my inclination so far as to oblige him and to communicate to you his wishes, which I cannot do more fairly than in his own words expressed in his letter. He is a gentleman of plain manners and has an extensive connection in New England, and is well known to my friends Winslow and Chipman, and to every gentleman from that part of America, was appointed Attorney General by General Gage, and will be strongly recommended by him.

The place of Chief Justice is, I suppose, intended for Judge Ludlow, of New York. There will then remain to complete the Court to the usual number, the appointment of three puisne Judges.

I beg you to forgive this liberty, and that you will believe me with every sentiment of esteem and repute,

Your most obedient servant,

DANIEL MURRAY. (1)

To COL. FOX.

In the disposition of the offices in New Brunswick, Col. Fox had no voice, for he was not, as had been by some expected, appointed governor. The Chief Justiceship, as Mr. Murray anticipated, was given to Judge Ludlow, of New York. Mr. Putnam, however, was appointed senior Judge with the salary of three hundred pounds sterling, and this with his half pay as Colonel, of a like sum, would render his position for the remainder of his days one of independence. In addition to these, he received from the government compensation for his loss of property.

The following letters all relate to the fortune of Judge Putnam and his family during the early period of Provincial history :

LONDON, July 20, 1784.

DEAR BROTHER,—

My son Ebenezer has been confined almost all the winter at New York with the rheumatism, and this summer has got the ague and fever. He is there yet, and if that, as one of the thirteen flourishing independent united American States, should prove favorable for trade, perhaps he may try it. You may perhaps hear of me quickly in Nova Scotia, or rather New Brunswick, a new Province to the northward of Nova Scotia.

Your most affectionate Brother,

DR. EBENEZER PUTNAM.

JAMES PUTNAM.

Worcester, Mass.

He shortly after came to New Brunswick, as the following letter shows :

PARR, RIVER ST. JOHN, NEW BRUNSWICK,

November 18, 1784.

DEAR BROTHER,—

I have been at this place about ten days and am surprised to find a large flourishing town regularly laid out, well built, consisting of about two thousand houses and many of them handsome and well finished, and at the opposite side of the river, at Carleton, about five hundred more houses on a pleasant situation. A good harbour lies between the two towns, which never freezes, and can float many vessels of all sizes.

I left Mrs. Putnam and Betsy in England, and find that Ebenezer sailed from New York for London about a fortnight before I left England. I write to you now only to let you know where I am, and hope I shall be able to give you more particular account of our settlement in due time. The country appears to me to be very good, and I am satisfied will make a most flourishing Province. Give my love to your wife and children and brother.

I am most affectionately yours,

JAMES PUTNAM.

DR. EBENEZER PUTNAM,

Boston, Mass.

HALIFAX, 29th April, 1785.

DEAR CHIPMAN,—

Two days ago the ship John and Anne arrived in thirty days from London. Jonathan Bliss, young Sewell, Captain Sproul and family, Mrs. Putnam, her fair daughter and son Ebenezer came passengers. Bliss and Sewell dined with me yesterday, hope to get Sewell a passage in the government Brig, which will save him much trouble and expense. He pleases me much and will you. If you had a clever wife, the three would make a very pretty and agreeable family. It would not cost you so much to live with a prudent wife as it does with two or three mess mates.

How many men beside my friend pass through the best of their days single, because they have adopted the idea that a fortune must be made in the first place. This their way is their folly.

Adieu, every blessing attend you,

GREGORY TOWNSEND.

WARD CHIPMAN, ESQ.

Some of the real estate purchases of Mr. Putnam in New Brunswick are shown by the following:

This may certify, that James Putnam is the rightful owner of the lot No. 192, Carleton, being forty feet by one hundred having complied with the terms of receiving it.

By order of the Directors of the Towns
at the entrance of the River St. John.

OLIVER ARNOLD.

River St. John, November 11, 1784.

In 1785 Judge Putnam purchased from Rev. John Sayre, Rector of Maugerville, lot No. 36, Dock Street, fifty by one hundred feet, for thirty-five pounds.

In 1789 he bought from James Stewart lot No. 401, and house, foot of King Street, north side, for three hundred and fifty pounds. In 1814 his heirs sold it to Ezekiel Barlow for two thousand pounds in Spanish dollars.

In the following letter to his brother, the Judge gives his early impressions as to the agricultural capabilities of the country which were most favorable:

CITY OF SAINT JOHN,

Jan'y 22, 1786.

DEAR BROTHER,—

My family, except my eldest son, who is at Halifax, are now together here. My wife and son Eben were very sick when they arrived here, and had long been so, but are now both in good health. The climate is undoubtedly one of the healthiest in the world. Owing to that, with the particular attention, care and skill of Doctor Paine, they are well.

Since I wrote you last I have been up the River about one hundred miles. It was in August before they had done reaping. I made particular observation on many fields of wheat, rye, and Indian corn, etc., and am fully satisfied that I never saw apparently greater crops growing on the ground in any country. I went through a field of wheat in a foot path, and I thought then, and do really believe, I never saw larger or finer growing in the highest cultivated field in England. This had been under cultivation ten or twelve years, and never had manure put on it. It is, however, liable to be sometimes overflowed in a high spring freshet.

It is my opinion, and I am very sure I never saw so much good land together in any part of the world that I have been. It wants nothing but the common cultivation to be one of the most productive countries in the world. I mean particularly for corn and cattle. You will be surprised perhaps to hear me say corn, but in a few years you will see it fully verified. A gentleman who is one of the most distant settlers up the River, told me himself, and has been confirmed by many others of veracity, who have seen it, that he had about seventy acres of wheat in the ground last summer, which on the average was supposed, from the appearance, would yield twenty bushels an acre. He a few days since told me he had threshed out about five hundred bushels before he left home, and from what that yielded he had good reason to suppose it would hold out in that proportion. His crop was partly of winter and partly of summer wheat, and never a tree cut on the place but about two years ago. The weather has been very cold for a week or more the forepart of this month, but

no one day colder since I have been in the Province than I have known in Worcester or New York. The summers at St. John are not so hot, up the River are much hotter than here. The northerly winds in summer are cool here, but these nor the fogs which frequently come up here, go but a few miles up the country.

JAMES PUTNAM.

DR. EBENEZER PUTNAM,
Worcester, Mass.

FIRST LIBEL SUIT IN NEW BRUNSWICK.

At the first general election, 1785, of members for the House of Assembly, William Lewis and John Ryan, editors and proprietors of the *St. John Gazette and General Advertiser*, opposed the government candidate for St. John, publishing inflammatory articles, for which they were bound over, each in the sum of five hundred pounds, with two sureties for two hundred and fifty pounds, to answer at the May term, St. John, of the Supreme Court. The election was attended with rioting, the leaders were tried, convicted, fined and imprisoned. The Court at which they were placed at the Bar for trial was opened Tuesday, 2nd May, 1786. The Judges (3) present were: Hon. George D. Ludlow, C. J., Hon. James Putnam and Hon. Isaac Allen. The Grand Jurors were: John Ness, William Donaldson, Isaac Lawton, Cornelius Vanhorne, Abel Hardenbrook, Richard Holland, William Charlton, Alexander Fairchild, Charles McLean, George McCall, Samuel Tilley, William Balster, Ebenezer Putnam, Thomas Mallard and James Souvener. The Chief Justice made the proclamation and delivered the charge, after which the grand jury withdrew, but presently returned, finding a true bill against Lewis and Ryan on an information for criminal libel. The defendants being placed at the Bar, and charged as in the information, severally pleaded guilty, and put themselves on

the mercy of the Court. The Court met on the following day pursuant to adjournment, precisely as before when the defendants, on motion of the Attorney General, were brought to the Bar for judgment. It was ordered that they severally pay a fine of twenty pounds, and find security in fifty pounds each for their good behaviour for six months, and to pay the fees of the Court.

FIRST EJECTMENT TRIAL IN NEW BRUNSWICK.

Doe on the demise of Finucane v. Stelle.

This trial took place at Fredericton in 1787, Chief Justice Ludlow, Judge Putnam and Judge Upham being on the Bench. The counsel for the plaintiff was Jonathan Bliss and Elias Hardy. William Wylly (4) and Ward Chipman appeared for the defendant.

Before the organization of New Brunswick a number of the Loyalists at Parr Town and River St. John made a complaint to Governor Parr of Nova Scotia against the commissioners for the distribution of lands and provisions. Governor Parr sent Chief Justice Finucane to investigate the charges. While engaged in the mission entrusted to him by the Governor, he was not unmindful of his own interests, for on his return to Halifax he obtained for himself a grant of Sugar Island, containing five hundred acres in the St. John River, eight miles above Fredericton. The following letter of Edward Winslow refers to this grant:

HALIFAX, 27th March, 1785.

MY DEAR CHIPMAN,—

Chief Justice Finucane's grant of Sugar Island was indisputably included in the general location of land to the Provincials, drawn for and in the actual possession of particular corps, and under the sanction and permission of the governor. This grant has already been the subject of my animadver-

sions. Integrity blushes at the recollection of it and other grants, and the most intrepid friend of the government will shudder at the contemplation of such indignity.

I hope Col. Allen and all the parties will dispute it by inches.

Yours ever,

EDW. WINSLOW.

WARD CHIPMAN, ESQ.

Jonathan Sewell also writes of this grant:

FREDERICTON, 6th July, 1786.

DEAR SIR,—

Mr. Andrew Finucane (5) has this moment arrived. What reception he will meet with I cannot at present tell. Judge Allen has publicly expressed himself he would not invite him to his table, that the character he appears in is so very disagreeable to all ranks of the people in that part of York that he should not consider himself safe in receiving him as a gentleman of his acquaintance, and of this determination he will inform Mr. Finucane as soon as he meets him, to prevent any further disagreeable consequence. This kind of opinion prevails through all the better class of settlers interested in the fate of Sugar Island. The inferior classes, if they were not convinced of the necessity of proceeding with circumspection, would treat him very harshly. Should Mr. Finucane venture in *propria persona* upon the premises to display his courage, it may chance to be cooled by a species of discipline ill suited to his years. A rod is in pickle. Literally, I am informed that some gentlemen say a whipping would be of infinite service to him. How far they may carry the joke is not my province to determine.

Thus much for Sugar Island or Gu-enim Island. The latter would afford an admirable opportunity for some New Brunswick antiquarian to prove the affinity between the Latin and the Indian language.

Your most obedient servant,

JON. SEWELL, JR.

WARD CHIPMAN, ESQ.

Ward Chipman and the grant:

ST. JOHN, N. B., July 7th, 1787.

DEAR SIR,—

Since you left me to this time my whole attention has been devoted to the contest respecting Sugar Island. I am not apt to be very sanguine in any opinion I form, especially in matters of abstract speculation, but I think I may venture on this occasion to say that upon the clearest principle of sound law I can demonstrate that the grant to Bryan Finucane of Sugar Island is null and void *ab initio*, and that you have no occasion to proceed by way of *Scire Facias* to repeal the patent. I will endeavour to be at Fredericton in season for you to peruse and digest my brief, which I have this moment completed, before the trial comes on. In the meantime have the goodness to get ready to be offered in evidence at the trial a copy of the original grant of the township of Sunbury, and a copy of the inquisition found at Fredericton respecting the last escheated rights of Smith and others. There occurs to me after the laborious task I have had in investigating this business a good old adage, which reversed stands thus,—“*Sui sentit onus sentire debet et commodium.*” If we can get rid of this iniquitous grant I think we should have something for our trouble, and that we shall is beyond doubt certain. Believe, my dear sir, ever

Your most devoted friend and humble servant,

WARD CHIPMAN.

TO JUDGE ALLEN.

The case came on for trial, exciting not only great interest in York and St. John, but also at Halifax. The plaintiff was non-suited.

The first appeal case in New Brunswick was argued at the February Term, A. D. 1793. It was an action brought by Andrew Finucane for ejectment against Frederick de Peyster from Sugar Island. Judges Upham and Saunders presided. Elias Hardy appeared for the plaintiff, and Ward Chipman for the defendant. The evidence of Michael Finucane, father of the plaintiff, taken under a commission in Ireland to

prove the heirship of Andrew Finucane, was offered in evidence, and objected to as inadmissible, as the father was an interested party, being next of kin to the plaintiff. This evidence, however, was admitted. Judge Upham thought it admissible, Judge Saunders dissenting. Mr. de Peyster's counsel tendered a bill of exceptions to the ruling of the Court, and brought a writ of error, which was argued before the Court of Appeal (Governor and Council), which reversed the judgment of the Court below. Andrew Finucane appealed to the King and Council from the judgment of the Court of Error. Its judgment, however, was sustained, and the occupants of Sugar Island remained in possession.

ST. JOHN, N. B., November 4th, 1786.

DEAR BROTHER,

By Mr. Call I had your letters of the 11th September. I had not heard of the death of our brother.

The people of your State seem to be stirring up another Revolution. What do they want now? Do they find at last that to be freed from the British government, and becoming an independent State does not free them from the debts they owe one another, or exempt them from the charge of taxation. I wish they would pay me what they justly owe me. They may then have what government they please, or none, if they like that best.

As to my own affairs, you know what I receive from the government. Private chamber business as a judge may be from fifty to one hundred pounds a year.

As to compensation, I have just been informed that I stand reported for the next dividend. I am not certain how much this first payment is to be. I hope not less than fifteen hundred to two thousand pounds. There are three equal payments, as I am informed, and what I now mention is the first, and it for real estate only. Personal estate and loss of business not included in this. I have a grant of some good lands here, and may have as much more as I want.

Mrs. Putnam and Betsey join in their best wishes for you and your family's health and happiness.

Yours most affectionately,

JAMES PUTNAM.

DR. EBENEZER PUTNAM,
Worcester, Mass.

ST. JOHN, September 19th, 1787.

MY DEAR BROTHER,—

I have a good opportunity of writing by Dr. Paine. I could not excuse myself from writing. We are all pretty gloomy in our family, and have great reason for it.

My dear and only daughter died on the fourteenth of August last. Though she had been ill for many weeks, we had not the least apprehension of danger till about a week before her death. Her husband, Mr. Knox, was then, and now is, in Canada. He went away in June last on business of his offices. We were all well pleased with her marriage, and she had a pleasing expectation of living well and happy. But that is all over. James (6) is well at Halifax.

I am, dear brother, ever most affectionately

JAMES PUTNAM.

DEATH OF JUDGE PUTNAM.

Judge Putnam was the first of the New Brunswick Bench who died. His death took place at his residence in St. John, 23rd October, at the age of sixty-four years. The name is perpetuated through his second son Ebenezer, who was born at Worcester, Mass., 26th July, 1763. After the close of the war he engaged in commerce in St. John. He died in 1798, aged thirty-five years, leaving a widow and four sons. After the death of her husband, Mrs. Putnam returned to Worcester, Mass., where she died January 20th, 1820, aged fifty years. James, a medical student at Dartmouth College, died in the year 1810. John Chandler Putnam, a merchant of Boston, died in 1840, aged forty-

eight years. Francis Putnam, a barrister of St. Andrews, N. B., died in Boston at the residence of his brother in 1839. Charles Simonds Putnam in 1821 married at Annapolis, N. S., a daughter of Rev. Dr. Millidge. He was a member of the Bar, and at his death at Fredericton in 1837, in his forty-first year, was Clerk of the Crown. He left a widow, one son and two daughters. The eldest, Elizabeth, married Robert Lloyd of London. The youngest, Fanny, married the Rev. William H. Shore, grandson of Chief Justice Saunders. John Millidge Putnam, great-grandson of Hon. James Putnam, was educated for the Bar, and for many years has resided in England.

The following is the last will and testament of Judge Putnam:

I make this day for my last will and testament. I give my wife Elizabeth the use and improvements of all my estate, real and personal, so long as she remains my widow, and after that the use of one-third of it only. But to my son James Putnam must first be paid the sum I owe him for money had and received of him, and paid and applied by him, for the use of our family, to the value of three hundred pounds sterling at least. My son Ebenezer Putnam has already received the sum of six hundred pounds sterling of my estate this year through the hands of my agent, Samuel Rogers, in London. This sum must first be deducted from Ebenezer's share and portion of my estate as so much advanced to him. Then the remainder of estate that I have, or may have, I give and devise to my said two sons, James Putnam and Ebenezer Putnam, to be equally divided among them, their several heirs and assigns. It is my will, further, that my said two sons shall pay to my granddaughter, Elizabeth Putnam Chandler, twenty pounds currency each of them within two years after my decease, if she lives so long, and to my son-in-law, Thomas Knox, as a small token of my affection for him, I will they pay him twenty pounds each of them within one year after my decease, if he lives so long. I do also constitute and appoint my said wife Elizabeth, my said sons James and Ebenezer, any one, two, or all of them together, to be executors of this my last will and testament.

In witness whereof I, James Putnam, of St. John, Province of New Brunswick, have hereto set my hand and seal this twenty-second day of September, 1788, Anno Domini.

JAMES PUTNAM.

Signed, sealed and delivered for the purpose aforementioned in the presence of Ross Curry (7), John Smith, Thomas Hanford.

In the old Burial Ground in St. John for over a century the Putnam tomb has arrested the eye of all who enter the historic grounds. The following is the inscription on the tomb :

SACRED

To the memory of the Honourable James Putnam, who was appointed a member of His Majesty's council and a member of the Supreme Court in the organization of the government of this Province at its original formation in A.D. 1784. He had been for many years, before the war which terminated in the independence of the United States of America, an eminent Barrister at law, and was the last Attorney General under His Majesty in the late Province of Massachusetts Bay. He died the 23rd day of October, A.D. 1789, aged 64 years.

In this vault also was deposited the remains of his wife Elizabeth Putnam, who died the 3rd day of May, 1798, aged sixty-six years, and of his daughter, Elizabeth Putnam Knox, who died the fourteenth day of August, A. D. 1787, aged eighteen years; and of his granddaughter, Elizabeth Putnam Knox, who died on the 10th day of November, A. D. 1787, aged three months; and of his son, Ebenezer Putnam, Esq., a merchant in this city, who died on the 3rd day of April, A. D. 1798, aged thirty-six years; and of his great-grandson, James Putnam, who died the 13th day of January, A. D. 1825, aged eleven months.

NOTES.

(1) Daniel Murray was a son of Col. John Murray, who died in St. John, A. D. 1794, in his seventy-fifth year, and was grandfather of Hon. R. L. Hazen and great grandfather of Hon. L. A. Wilmot. An oil portrait of Col. Murray is in the possession of J. Douglas Hazen, Esq., M. P. P. of the city of Saint John, N. B. In the war Daniel Murray was a major in the King's American Dragoons. He settled in York, and in the first three elections for the House of Assembly was returned as one of the representatives for that county. He never followed the profession of law after 1776, when he engaged in the war. In 1803 he left New Brunswick for the United States, and died in 1832 at Portland Maine.

(2) Gregory Townsend held an office in the Commissariat, which he retained till his death in Halifax, A. D. 1798.

(3) When two or more judges presided at a trial it was called "Trial at Bar." The last at St. John, N. B., was in 1787; but they were continued long after at Fredericton. The judges when they differed, each addressed the jury.

(4) William Wylly, who was a southern Loyalist, was the first King's counsel, and first Registrar of the Court of Vice-Admiralty in New Brunswick. Mrs. Wylly was a daughter of Mr. Mathews, last Mayor of New York under the Crown. In 1787 Mr. Wylly left New Brunswick with his family for the Bahama Islands, West Indies, where he had relatives, and where many southern Loyalists resided. He was the first of the Bar to leave the Province. From his new home he writes to Ward Chipman in St. John:

NEW PROVIDENCE, 19th March, 1788.

DEAR CHIPMAN,—

I did myself the honor of writing to you by the return of the vessel in which I came. I hope you have been free from the gout and overwhelmed with fees, and that Mrs. Chipman and your little boy are as well as you could wish them. Since our residence here I have been presented with a burly boy. The governor appointed me Solicitor General on my arrival, and I have this day received the place of Surrogate of the Court of Vice-Admiralty, worth perhaps two hundred pounds a year. These open my way to a lead in the practice, which as yet is not very extensive, but must increase with the astonishingly rapid progress of these islands. Our cotton and Spanish trade are fruitful sources of wealth to the place and merchants. When they grow rich, we must certainly come in for a tax of their industry. How does the law go on with you? I hope you have an abundance of grist to both mills. The ladies join me in desiring their best compliments to Mrs. Chipman, and I beg you to believe me ever,

Yours, truly,

WM. WYLLY.

WARD CHIPMAN, ESQ.

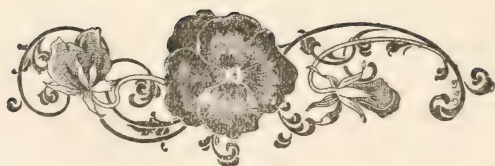
Mr. Wyllly died in Devonshire, England in 1828, aged seventy-one years, leaving four sons and four daughters.

(5) Chief Justice Finucane was dead, and his brother Andrew claimed Sugar Island as his heir.

(6) James Putnam, the eldest son of Judge Putnam, at the close of the war, was deputy Barrack master at Halifax. He met there the Duke of Kent, and went with him to England, and became a member of his household, and on the death of His Royal Highness in 1820, was one of his executors. Mr. Putnam died in England unmarried in 1838, aged eighty-two years.

(7) Ross Curry was a lieutenant and adjutant in the Loyal Pennsylvania regiment of which Rev. Jonathan Odell was chaplain. At May term 1785, he was admitted a barrister. Mr. Curry had his office

in St. John, N. B., and was a partner with Elias Hardy. He married a daughter of Dr. Nathaniel Clark, of the Parish of Douglas, York Co. In 1790, while he was crossing the St. John river at Fredericton, by night, his canoe upset when near the site of the present government house, and he was drowned. Capt. Eccles of the British army, who married a sister of Mrs. Curry, placed a monument in the Fredericton burial ground over the grave of Ross Curry and Nathaniel Clark.



CHAPTER IV.

HON. ISAAC ALLEN.

The grandfather of Isaac Allen emigrated from England to America, and became a Judge of the Supreme Court of the Province of New Jersey. His son, John, was born in 1718, and in 1738 married Miss Watson. They had three sons, John, Isaac and William, and a daughter, Hannah. Isaac was born in 1741 and educated for the Bar. He practised law in Philadelphia and at Trenton, N. J. In 1769 he married Miss Sarah Campbell, of Philadelphia, whose parents came from Ireland. When the Revolutionary War commenced, Isaac Allen, being a Loyalist, was appointed Lieut.-colonel of the Second Battalion of New Jersey Volunteers. The other officers were,—Major, Robert Drummond; Adjutant, John Jenkins; Chaplain, Rev. James Sayre; Surgeon, Daniel Bancroft; Quartermaster, John Folkes. The regiment was employed during the war principally in Virginia and North and South Carolina, and was present at the battles of Kings Mountain and Eutaw Springs. Isaac Allen had a valuable property in Pennsylvania, which he forfeited in consequence of the side he took in the Revolution, the Executive Council of the State of Pennsylvania having ordered that unless he surrendered within a certain time and take his trial for treason, he should stand attainted, and his estate be forfeited.

At the termination of the war in 1783, Isaac Allen went to Nova Scotia with his family, consisting of his wife, mother and sister, five children and five servants. He obtained a grant of land at Wilmot, Nova Scotia,

and remained there till the Province of New Brunswick was established. His only son John was born there 27th June, A. D., 1784. Among the other Loyalists at Wilmot were Colonel DeLancy, Colonel Beverley Robinson, Jr., and Major Barclay, all of whom came from the Province of New York.

Upon the organization of the Province of New Brunswick, Isaac Allen was appointed to a seat in the Council and the second puisne judge of the Supreme Court, his commission bearing date the 25th of November, A. D. 1784. He then came to this Province with his family, and drew two lots of land in Parr Town, which he soon afterwards sold to Thomas Horsfield for five pounds each, and went up the river to St. Anns (now Fredericton) and obtained a grant of two thousand acres seven miles above Fredericton. Within the bounds of this tract of land, and fronting on the river St. John was an Indian settlement called by the Indians "Auk-paque" which in their language means the beginning of swift water, or where the effect of the tide ceases to be perceptible in the river. He also obtained a grant of an island in the river St. John, opposite the tract of land, which was called Isle Savage, or Indian Island, since called Savage Island, containing 220 acres. This island had been reserved for the Indians by the government of Nova Scotia, and was held by Francis Xavier and three other Indian chiefs for the Milicite tribe of Indians. Isaac Allen purchased from the Indians their interest in this island, and in order to place his title beyond question, it was included in a grant to him from the Crown in the year A. D. 1795. He built a dwelling-house on this tract of land a quarter of a mile above the Indian settlement at Auk-paque, and lived there till his death.

FIRST TRIAL AT FREDERICTON.

David Nelson and William Harboard, disbanded soldiers, living on their farms in the parish of Queensbury, twenty-seven miles above Fredericton, were put on trial for the shooting of an Indian. The prisoners were examined 24th May, 1786, by Hon. Isaac Allen and Hon. Edward Winslow, two of His Majesty's Justices of the Peace for the County of York (1). David Nelson testified that last Saturday, the sun being about half an hour high, he and his comrade William Harboard, went to the river to catch fish. After being there a short time, he said, "I heard dogs by the house after our hogs. I dropped my pole and ran to the house for my firelock. When just above the house I found two dogs gnawing one of my hogs, which they had killed. When the dogs saw me they ran, and I fired at them. I spoke to William Harboard and desired him to fire, which he did, and killed one of the dogs. I then desired Harboard to go with me and see if other hogs were missing. We went, but could not find any. I then said the hogs must be taken into a boat. Whoever owns the boat must have the hogs. We then went to the shore and discovered some Indians about a quarter of a mile up the river. We beckoned to them to stop. They answered, "No, no, and you have killed my dog." I repeated to them to stop and said, "You have got my hogs." Then they pushed away across the river, which confirmed me in the opinion they had the hogs in the canoe. William Harboard then said, "Let us fire over their heads, maybe they will hear the balls and come to," upon which both fired, but without any design or intention of killing or wounding the persons in the canoe. I then loaded and fired the second shot for the same purpose.

We then went again in search of our hogs and found all but one which we supposed was in the canoe.

his
DAVID+NELSON.
mark

In the canoe were an Indian and his squaw. One of the shots killed the Indian. His squaw then paddled the canoe to an island near an Indian encampment. Edward Winslow wrote the following letter relative to the shooting:

FREDERICTON, May 25th, 1786.

MY DEAR CHIPMAN,—

The enclosed letter to the Governor, with the examination contained therein, will explain to you a transaction which has been the source of great concern to our friend Col. Allen and myself. You will peruse the papers, seal the letter to the Governor and present it, and I expect of you that you will, on our behalf, urge the absolute necessity of the attendance of the Chief Justice.

The Indians on the one hand are clamorous for an instant decision. The multitude (I mean the people of the country) cannot reconcile themselves to the idea, that two men of fair character should be sacrificed to satisfy the barbarous claims of a set of savages. In this situation you will naturally suppose that we have had an arduous task to keep them quiet. We have assured both parties that the men will be fairly tried, and if guilty they will be punished. We have told them the Chief Justice must attend, and that he will set off as soon as he receives the information from us. I wish, when you deliver the Governor's letter, that you would suggest the peculiar situation of Col. Allen. The whole of the Indians are encamped around his house, and their rendezvous has already distressed his family and made them unhappy. He had lately made a compact with them for a lot of land, and they think they have a right to call on him whenever they please. This event has increased their familiarity, and I believe if they had the idea he possessed the authority to decide in the present case, they would press him to peremptory decision, and if it was not agreeable to them, they might render the situation of the family very uncomfortable. I am not

apt, you know, to anticipate evils, but I really believe the Indians would be troublesome on such an occasion. These considerations induce me to write thus ardently, that the Chief Justice will come, and that he come immediately. Impress this strongly on the Governor.

And now Chip. let me tell you one thing more. I think you should come to this country on some public occasion. Can a better offer than the present? The prosecution is a matter of national expectation on one side, and of great concern on the other. Either the Attorney General or the Solicitor General must or ought to attend. Col. Allen authorizes me to tell you he has business of some consequence to engage you in. His gown and bands are at your house, his coat and waistcoat at Judge Putnam's. Pray don't forget them.

In haste, yours,

EDW. WINSLOW.

WARD CHIPMAN, ESQ.

The court opened at Fredericton 14th of June, 1786, with Chief Justice Ludlow and Judge Allen presiding. David Nelson and William Harboard were placed at the Bar for the shooting of the Indian. Ward Chipman produced his commission as Clerk of the Crown on the Circuits, and conducted the prosecution. The prisoners were not defended by counsel, it not being allowed to persons charged with capital offences (2). The petit jury, the first at Fredericton, was made up of the following persons: Cornelius Thompson, George Cox, George B. Rodney, Jacob Blacker, Xenophen Jewett, William Gevard, Joseph Harrison, Isaac Benson, Charles Mathewson, John Jewett, Josiah Barker and Francis Stephenson. Three witnesses were called, one being Edward Winslow, who had assisted in taking the preliminary examination of the prisoners, to prove their statements before the justices of the peace, and that they were made voluntarily, in which case they would be evidence against the prisoners. They were both found guilty of shooting the Indians, and

sentenced to be hanged 23rd of June, nine days after the opening of the court, and less than one month after the shooting of the Indian. Jonathan Sewell wrote the following letter relative to them :

FREDERICTON, 6 July, 1786.

DEAR SIR,—

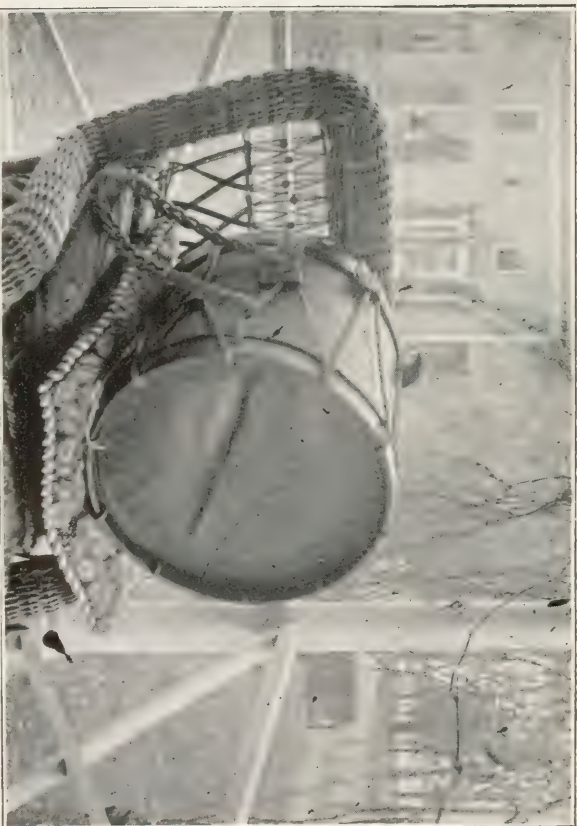
Poor Harboard has been out of his senses. When told he was reprieved, he replied that he had suffered what was worse than death, and was perfectly indifferent about his execution. He is now at liberty, and at his former home. Parson Beardsley did not think proper to attend the unfortunate Nelson the day of his execution, although he was, as you remember, particularly requested.

Yours truly,

JONATHAN SEWELL, JR.

The belief was general that if Nelson had not been executed the Indians would have had revenge, but seeing justice done, they were ever peaceable.

Charles Nichau Noiste, a native Indian, was tried and convicted in November, 1784, in the Courts of Kings Bench at Quebec for the murder of one Archibald McNeil at Madawaska, Grand Falls. In the *Quebec Gazette* of the 11th of November, A. D. 1784, an account of the execution of this Indian appears, and the case is remarkable by reason of a commutation having been granted of the mode of executing the sentence of death. The Council meeting for this purpose was held in the Council chamber at the Castle of St. Lewis, Quebec, the 3rd of November, A. D. 1784. There were present at the meeting, His Excellency Frederick Haldimand, Governor; Hon. Henry Hamilton, Lieut.-Governor; Hugh Finlay, Adam Mabane, Thomas Dunn, George Pownall, Francois Levesque, J. G. C. DeLevy, Edward Harrison, Henry Caldwell, John Collins, and Francis Baby, Esquires. His Excellency the Governor laid before the Council a "sen-



Old drum belonging to Judge Allen. Now in possession of his great-grandson, T. Carleton Allen, K. C., Fredericton. The drum is 17 inches long and 16½ inches in diameter. The inscription in circular form on head of drum is "2nd Battalion, New Jersey Volunteers" and in the centre the year 1777.

tence pronounced this day against an Indian named Charles Nichau Noiste to be hanged by the neck until he be dead," and stated that application had been made to His Excellency by the friends and relatives of the culprit, the Indians of his and other nations, to change the punishment pronounced by law into that of shooting, which is more consonant to the ideas of savages, and His Excellency requested the advice of the Council as to how far mercy ought to be extended in the way of changing the punishment, which was so earnestly prayed for. The Council, having weighed the matter, and the consequences that might ensue, were unanimously of the opinion that the "punishment should be changed, and that the said Charles Nichau Noiste should be shot in place of being hanged, as is directed by this sentence." The Province of Quebec continued to claim jurisdiction down to the Grand Falls on the River St. John until the year A. D. 1792, when the the British government called on the governments of Quebec and New Brunswick to adjust the lines between them.

THE FIRST SLANDER TRIAL.

On the 15th of November, A. D. 1781, General Benedict Arnold left New York for England, two years before its evacuation by the British. Among the fleet of one hundred sail was the ship *Robust*. The passengers in her were Lord Cornwallis, General Arnold, General Tarleton, Colonels Dundas, York, and Lake, Major Ross and Captain Sterling. When out eleven days a gale arose, so violent that the *Robust* had to bear away for the West Indies. Lord Cornwallis with other officers went on board the *Grey Hound*, and General Arnold and Captain Sterling went on board the *Edward*. Arnold, after a residence of nearly four years in England, returned to America.

During his residence in England, the British government gave Mrs. Arnold a pension for life of five hundred pounds sterling, with pensions to each of her children of one hundred pounds.

HALIFAX, November 22nd, 1785.

DEAR CHIPMAN,—

* * * * Will you believe General Arnold is here from England, in a Brig of his own, as he says, reconnoitering the country. He is bound for your city, which he will of course prefer to Halifax, and settle with you. Give you joy of your acquisition.* * * *

Yours,

S. S. BLOWERS.

Upon coming to St. John, Arnold purchased lot No. 1329, adjoining the corner of Main and Charlotte streets, where he erected a large store for wholesale business, and formed a partnership with Munson Hoyt. In May, 1786, he purchased a vessel on the stocks at Maugerville, River St. John, and named her *Lord Sheffield*. In this vessel he went to the West Indies on a trading voyage, and from there to England, leaving the business at St. John with his partner. While in England, and upon the suggestion of his friends there, he effected insurance on the store for one thousand pounds, and on the stock in it for four thousand pounds. He returned to St. John, July, A. D. 1787, in the ship *Peggy*, bringing Mrs. Arnold and their children.

On the night of the 11th July, 1788, the store and its contents were destroyed by fire. The General's son Henry was in the building, and narrowly escaped with his life. Nearly two years after the fire, Munson Hoyt, with whom he had dissolved partnership, charged Arnold with setting fire to the store. This was followed by the General bringing an action for

slander, claiming five thousand pounds damages. Attorney General Bliss and Solicitor General Chipman were retained by Arnold. Hoyt was defended by Elias Hardy.

The following are extracts from the pleadings in the case:

IN THE SUPREME COURT.

Between BENEDICT ARNOLD

Plaintiff;

AND

MUNSON HOYT,

Defendant.

SIR,—

Please take notice that Bail was this day put in for the Defendant in the above action before Mr. Justice Upham at his chambers on Charlotte Street, St. John, and the names of the Bail are, James Hoyt of the City of St. John, and Charles Thomas of the same place, mariner.

ELIAS HARDY,

Attorney for Defendant.

Dated 11th September, 1791.

WARD CHIPMAN,

Attorney for Plaintiff.

DECLARATION.

The Declaration after the usual allegations of the Plaintiff's good character, stated that for several years previous to the speaking of the words he had been engaged as a merchant in St. John; that he was possessed of a store in which he had a large quantity of valuable goods, worth five thousand pounds, and had them insured in London for that amount; that in July, 1788, the store and goods were accidentally destroyed by fire, whereby the insurers became liable to pay him the value of the property. Nevertheless the Defendant well knowing the premises, but falsely and maliciously continued to blacken and injure the Plaintiff's character, and to bring him into such disgrace with the King's liege subjects that they would not deal with him, and to hinder him from recovering the insurance, falsely and maliciously on the seventh day of May, A. D. 1790, spoke and published of the Plaintiff the following words: "I will convince the world that you are

the greatest rascal that ever was, that you burnt your own store, and I will prove it. It is not in my power to blacken your character, for it is as black as it can be. But one thing I will let the world know, that you burnt your own store." The Defendant pleaded in justification the words were true. As the Defendant pleaded a plea of justification, thereby admitting the speaking of the words charged, the affirmative of the issue was upon him, and he called twenty-eight witnesses in support of his plea. After the evidence for the defence was all in, the Plaintiff called twelve witnesses to rebut it, two of them being his sons, who were in the store at the time it was destroyed by fire. After the charge of Judge Allen, the jury retired, and upon returning into Court with their verdict, there were sitting with the judge, Judge Upham, Mayor Campbell and Aldermen Rogers and Putnam. The verdict was for the Plaintiff with twenty shillings damages.

On the (3) eve of the trial Stephen Sewell, a student in the office of Ward Chipman, wrote his brother Jonathan at Quebec as follows:

The Circuit Court opens to-day, with Judge Allen on the Bench. The defamation case comes up on Friday, and if they should have to go into all the General's transactions in this country, which is not impossible, it will take them some days. The General has thirty witnesses.

About a month ago I went up the River after two black men with the General. We found one on the main River, the other on the Kennebecasis, both giving evidence as nearly alike as possibly could be, which was to their purpose. One of them went up with Harry to the top of the store the night it was burnt, with a candle after some oak to make a boat. There was such an appearance of veracity, and fear withal of what might be the consequences, their story so direct which they told without any leading questions, the declaration that they had never seen any of the General's family, that no one had ever said a word to them respecting the fire, their strong appearance of truth, candour and simplicity, which is always visible particularly in black men, altogether is sufficiently presumptive evidence against anything Hoyt can allege, that the store was burnt otherwise than by accident. Mr. Chipman takes a great deal of pains in the business, and he has told me that it is one of the most hellish plots that ever was laid for the destruction of a man.

BENEDICT ARNOLD (4) LEAVES NEW BRUNSWICK.

"Public Auction at the house of General Arnold, King Street, Thursday, 22nd of September, at 11 o'clock, if fair weather, if not, the first fine day.

A QUANTITY OF HOUSEHOLD FURNITURE.

comprising excellent feather beds, mahogany four-post bedsteads, with furniture; a set of elegant cabriolet chairs covered with blue damask, sofas and curtains to match; card, tea and other tables, looking glasses, a secretary desk and book case, fire screens, girandoles, lustres, an easy and sedan chair, with a great variety of other furniture; likewise an elegant set of wedgewood gilt ware, two tea table sets of Nankeen china, a variety of glassware, a terrestrial globe; also a double wheel jack, and a great quantity of kitchen furniture; also a lady's elegant saddle and bridle.

JOHN CHALONER,

St. John, September 6, 1791.

Auctioneer.

BENEDICT ARNOLD IN ENGLAND.

"LONDON, 16th August, 1792.

DEAR SIR,—

We feel ourselves much obliged to you and Mrs. Chipman for the kindly concern you expressed for the sufferings on the voyage to England, and for your good wishes. We have the pleasure to assure you that we enjoy tolerable health, and find this country fully as pleasant as St. John, though we much regret the loss of the little friendly society we had there. I have taken the liberty to send you a small parcel containing flannel hose, socks and pair of gloves, which I beg you to accept. Should you again be attacked with the gout, you will find them serviceable; I most sincerely wish it may be the case. I certainly would not, had I the power to, transfer the disease to some of my *good friends at St. John*. There is a small parcel in yours that I will thank you to send to Mr. Bliss. Mrs. Arnold joins me in best wishes to you and Mrs. Chipman, and in sincere wishes for your health and happiness. Master George and Sophia unite in love to Master Chip. We beg to be remembered to Mr. Hazen's family.

I am, with great regard,

Dear Sir, yours,

WARD CHIPMAN, ESQ.

B. ARNOLD.

Benedict Arnold died in London, June 14th, A. D. 1801, in his 62nd year. By his first wife he had two sons, Robert and Henry. They settled in Upper Canada on a grant from the British government in 1798 of 13,000 acres to their father for his services at Guadeloupe. General Arnold married his second wife in April, A. D. 1777. She was a daughter of Edward Shippen, the last Royal Attorney General of Pennsylvania, and she died in London in 1804, at the age of 45 years, leaving four sons and one daughter. Of her an American wrote, "In the difficult position she occupied as the wife of General Arnold, she bore herself with a dignity and grace, and with a modesty, sincerity, and truth, of which any people might be justly proud." Their son James Robertson Arnold, an officer in the Royal Engineers, visited St. John in 1819. On going to the old home he wept like a child. In 1830 King William IV appointed him one of his aides-de-camp.

In 1800 a slave test case was heard before the full Bench at Fredericton comprised of Chief Justice Ludlow and Justices Allen, Upham, and Saunders. The counsel for the master were Jonathan Bliss, Thomas Wetmore, John Murray Bliss, Charles J. Peters, and William Botsford. The Counsel for the slave were Ward Chipman and Samuel Denny Street. All the Counsel addressed the Court. The speech of Jonathan Bliss was divided into thirty-two heads, and that of Ward Chipman covered eighty pages of foolscap. The Court divided, the Chief Justice and Judge Upham supporting the master's right to the slave, while Judge Allen and Judge Saunders were against the sufficiency of the return. As no judgment was entered the master took back his slave. From that time property in slaves depreciated. Some masters entered into an agreement with them for wages.

The following correspondence of Ward Chipman and S. S. Blowers, Chief Justice of Nova Scotia, throws much light on the question of slavery in the old colonies:

"ST. JOHN, N. B., December 15, 1799.

MY DEAR BLOWERS,—

The occasion of this letter is a subject which has from time to time been under judicial discussion here, but has never yet received any final determination on principle. At length a *Habeas Corpus* has been brought, upon which the broad question is to be decided. It stands for argument at the next term of our Supreme Court, and I am a volunteer for the right of human nature. The Court is divided. The Chief Justice undertakes to vindicate the right of slavery, and Judge Allen as strenuously insists that it is beyond the power of human nature to justify it. I do not know that the opinion of the other judges is made up on the point, but I do not think it impossible that they will also be divided.

I do not mean to enter into the merits of this question in this letter, nor should I have troubled you on this occasion were it not that our Chief Justice grounds himself principally upon what he calls the "Common law of the Colonies," by which he says this doctrine has been uniformly recognized and established without any act having ever passed in any one of them directly authorizing slavery. How this fact is as it regards the other colonies and islands, I know not, but it becomes of the first importance to ascertain the law of Nova Scotia on this head, as if there is any such principle of our Common law we must derive it immediately from you.

I confess the idea of any such common law in the colonies, not only unknown, but repugnant to the Common law of England, appears to me to be rather fanciful. I write therefore for information what the law and practice are with you, whether the question has ever been judicially determined, whether there was ever any act of Assembly in your province upon the subject, and upon what ground the right of the master is supported, if slavery is recognized at all among you. With respect to the question at large, we are very deficient here in any treatise upon it, having no public library, and but indifferent private ones, and these very much scattered.

I have now only to beg you will forgive the freedom I have taken, and to present my most affectionate regards to Mrs. Blowers and other friends at your fireside. Permit me to assure you that I am,

Most faithfully your devoted friend,

WARD CHIPMAN.

HON. S. S. BLOWERS,

Halifax.

Judge Blowers thus replied:

HALIFAX, December 22nd, 1799.

MY DEAR CHIPMAN,—

Yesterday I received yours of the 15th ult. by post. I often think with pleasure on the days we laboured together in our vocation at New York, when we lived in habits of friendly intercourse; and although we have been so long separated, still cherish with great warmth my affectionate esteem for you. The question respecting the slavery of negroes has been often agitated here in different ways, but has not received a direct decision. My immediate predecessor dexterously avoided an adjudication of the principal point, yet as he required the fullest proof of the master's claim in point of fact, it was found generally very easy to succeed in favor of the negro by taking some exceptions material to the general question, and therefore that course was taken. The right to hold a negro by this tenure is supposed by us to be only maintainable either by the Common law of England, the statute law of England, and the Colony, or upon adjudged cases, and such seemed always to be Mr. Strange's opinion. No lawyer ever talked with us of Common law of the Colonies, as distinguished from that of England, nor would our late Chief Justice have countenanced a position of that kind.

The Common law of England has been claimed and recognized as the birthright of every British subject in the Colonies, and has been so considered as well by the most eminent lawyers in England, as well as by the Superior Courts of Judicature in most, if not in all, the British Colonies in North America before the Revolution. The act of Federation which established the present constitution of the United States recognizes the Common Law of England as the basis of it. Agreeable to the practice which formerly obtained in case of Villeinage in England, a summary decision of the question



View of Old Province Hall and Public Buildings,
Fredericton, N. B.



View of Fredericton in 1837.

of slavery between master and negro here has always been resisted, and the party claiming the slave has been put to his action; and the several trials have been had in which the jury has decided against the master, which has so discouraged them that a limited service by indenture has generally been substituted by mutual consent. Mr. Strange always aimed to effect this and generally succeeded. We have no act of the Province recognizing the slavery of negroes as a statute right. An attempt was once made in the House of Assembly to introduce a clause of the kind in a Bill for the regulation of servants, but it was rejected by a great majority.

Some years ago I had determined to prosecute one for sending a negro out of the Province against his will, who had found means to get back again. But the master being willing to acknowledge his right to freedom, nothing further was done. On that occasion I made a few short notes, which I send you enclosed in their very rough state. They will show you the ground on which I intended to proceed. When you have done with them, be so good as to send them back to me. Since I have been Chief Justice a black woman was brought before me on *Habeas Corpus* from the gaol at Annapolis. The return was defective and she was discharged, but as she was claimed as a slave I intimated that an action should be brought to try the right, and one was brought against a person who had received and hired the wench. At the trial the Plaintiff proved a purchase of the negro in New York as a slave, but as he could not prove that the seller had a legal right so to dispose of her, I directed the jury to find for the Defendant, which they did. Though the question of slavery was much agitated at the Bar, I did not think it necessary to give any opinion upon it. I had frequent conversations with Mr. Strange on the question, and always found that he wished to wear out the claims gradually, rather than to throw so much property, as it is called, into the air at once. I have written you fully, and hope that what I have sent you may be of use.

God bless you.

I am, yours truly,

WARD CHIPMAN, ESQ.

S. S. BLOWERS.

St. John, N. B.

Ward Chipman replied, thanking Chief Justice Blowers for his favour, and stating the opinions

arrived at in the slave case tried at Fredericton. The reply reads thus:

ST. JOHN, N. B., 27th of February, 1800.

DEAR SIR,—

Accept my best thanks for your letter of 7th ult., which came to hand in season for me to avail myself of all the valuable information contained in it. I had proposed to argue the cause upon the same general grounds stated in your notes you enclosed, but they were of great assistance to me. The cause was very fully argued, and lasted two whole days. The Court was finally, as I anticipated, divided. The Chief Justice and Judge Upham supported the master's right, while Judge Allen and Judge Saunders were against the sufficiency of the return, so that no judgment or order was entered, and the master took back his slave.

Our Chief Justice is very strenuous in support of the master's rights as being founded on immemorial usages and customs in all parts of America ever since its discovery. He contends that customs in all countries are the foundation of law, and from them the law acquires its force. The principal difficulty seemed to be in not finding any act of Assembly of your Province recognizing the condition of slavery there. Had the counsel for the master stumbled upon your act passed in 1762, as revived in 1783, in the second section of which negro slaves are mentioned, the conclusiveness of their reasoning on their principles would have been considered as demonstrated. In searching your laws upon this occasion, I found this clause, but carefully avoided mentioning it—

* * * * *

Respectfully yours,

HON. S. S. BLOWERS,
Halifax.

WARD CHIPMAN.

Chief Justice Blowers' reply to this letter is as follows:

HALIFAX, N. S., March 20th, 1800.

DEAR SIR,—

I am very much obliged to you for your letter of the 27th of February, and for the statement therein given of the negro case. * * * * *

The first Assembly met here in 1758. The Criminal Code,

the establishment of religious worship, the laws respecting the militia, wills and distribution of estates, the conveyancing of lands and many other useful laws were made, and which the general Assembly have employed almost ever since in spoiling by what are termed amendments.

I should have answered your letter earlier if my whole time had not been occupied in the business of the Supreme Court, or that of the general Assembly. The latter has been sitting more than two months doing mischief. Nothing in Society is more vexatious than popular controversies about what are considered privileges, nor any class of men so pestilent as noisy, talkative, debating demagogues.

God bless you,

I am always yours,

WARD CHIPMAN, ESQ.

S. S. BLOWERS.

Consequent on the issue of the trial and uncertainty of slave property, Stair Agnew returned the negro woman to her former owner, as appears from the following document:

MONCKTON, York, February 27, 1800.

Whereas, William Bailey, of the County of York, Province of New Brunswick, some years ago sold me a negro woman named Nancy Morton for the sum of forty pounds, and warranted in me a title to said negro as a slave;

And whereas, Said title has become a matter of dispute by the said negro claiming her freedom;

And whereas, In consequence of said claim of freedom, the said William Bailey has consented to take back the said negro, and to return the purchase money thereof,

KNOW ALL MEN BY THESE PRESENTS, That I, Stair Agnew, of the said County and Province aforesaid, do hereby forever release to the said William Bailey all the right and title that I now have or ever had from him to the said Nancy Morton.

S. AGNEW.

GEORGE LEONARD,
THOMAS WETMORE,
Witnesses.

The day following, Nancy Morton bound herself to William Bailey for fifteen years.

After the trial, Stair Agnew (6) sent a challenge by John Murray Bliss, one of his Counsel, to Judge Allen to fight a duel. The challenge, however, was declined. In those days it required a good deal more courage to decline a challenge to fight a duel than it did to fight one. As a result of some words spoken at the trial by Samuel Denny Street, one of the Counsel for the slave, Agnew and he fought a duel. They and their seconds, Bliss and Anderson, were indicted, but were never tried. The case was stood over, and the indictment was ultimately quashed for irregularity.

After the trial (7) Judge Allen set free his slaves. One was a girl born in the East Indies, whom he bought from the master of a ship in New York. After obtaining her freedom, she married a man who had been in Colonel Allen's regiment.

Judge Allen died at his residence at Aupaque on the twelfth day of October, A. D. 1806, in the sixty-sixth year of his age. He was on the Bench and in the Council for nearly twenty years, and survived by seventeen years Judge Putnam, the first of the Judges who died. The British government, in whom the appointment of a successor was vested, was informed of Judge Allen's death in the following despatch:

FREDERICTON, February 9th, 1807.

SIR,—

I have the honor to transmit for His Majesty's information the enclosed list of His Majesty's Council, and to report the death of Isaac Allen, late a member of the Council, and one of the Judges of the Supreme Court of Judicature in this Province, which happened on the 12th of October last. As the appointment of Judges from among the gentlemen of the Bar in the Province would contribute much to keep alive the zeal and attachment of this Colony to His Majesty's government, I should have thought it my duty to suggest on this occasion the expediency of proposing for His Majesty's consideration to place Mr. Bliss, the present Attorney General,

on the Bench, and to appoint Mr. Chipman, the Solicitor General, to succeed him in the former office. But I have reason to think that neither of these gentlemen would wish to take the seat with a salary limited to three hundred pounds. I therefore beg leave to recommend William Botsford, a Barrister of good character in the Province as a fit person to fill this vacancy in the Supreme Court.

I have the honour to be,

G. G. LUDLOW (8).

RIGHT HON. WILLIAM WYNDHAM.

A sister of Judge Allen's died at Fredericton in 1835 at the age of ninety-one years. John, his only son, was for many years one of the judges of the Inferior Court of Common Pleas for the County of York, and for over twenty-five years he was one of the representatives in the House of Assembly. In 1823 he was inspecting field officer of the Provincial militia with the rank of Colonel. In 1845 Sir William Colebrook appointed him to a seat in the Executive Council. Colonel Allen died at the old home at Aupaque in 1875, in his ninety-first year.

Sarah, the last surviving daughter of Judge Allen, died at Fredericton in 1879, in her ninety-second year. The head of the third generation was the son, Sir John Campbell Allen.

NOTES.

1. The examination of the prisoners was under statute 1 and 2, Philip and Mary. It directed the justices, when a prisoner was brought before them for manslaughter or felony, to take the examination of the persons, and the information of them that bring him of the facts and circumstances thereof, and the same, or as much thereof as shall be material to prove the felony shall be put in writing.

2. By the laws of England which the colonists brought with them to America, prisoners were not

allowed counsel for capital offences, except to argue points of law, such as the sufficiency of the indictment, qualifications of the jury, incompetency of witnesses. Counsel was allowed to instruct the prisoner what questions to ask witnesses, and sometimes to ask for him. The Judge was presumed to see that the proceedings against the prisoner were strictly regular, and the evidence clear. In case of high treason the prisoner was allowed a full defence.

3. In view of the damage claimed by Arnold, the verdict was virtually for the Defendant, and would be regarded as such by his counsel, Elias Hardy. Three months later Arnold was in Court, as Defendant at the suit of James Holmes, with Elias Hardy as Attorney for the Plaintiff. The following is a copy of the writ in this cause:

[L. S.]

GEORGE THE THIRD, by the grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, etc., etc.

To the Sheriff of the City and County of Saint John,
GREETING:

We command you that you take Benedict Arnold, if he shall be found in your Baliwick, and him safely keep so that you may have his body before us at Fredericton upon the first Tuesday in February next, to answer James Holmes of a Plea of Trespass, and have then there this writ.

Witness: George Duncan Ludlow, Esquire, at Fredericton, the ninth day of October, in the thirtieth year of our Reign.

(Signed) CAMPBELL.

BENEDICT ARNOLD, ESQ.

You are served with this Process, to the intent, that you may by your Attorney, appear in His Majesty's Supreme Court at the Return thereof, being the second day of February next, in order to your Defence to this action.

Your Humble Servant,

E. HARDY,

Dec. 2nd, 1790.

Plff's Atty.

4. Ward Chipman's brief was in the possession of Mr. Lawrence, and covers eighty-two pages of foolscap.

5. In 1797 Attorney General Blowers succeeded Chief Justice Strange on his appointment to the Chief Justiceship of Bombay, East Indies.

6. Stair Agnew was a captain in the Queen's Rangers, and settled opposite Fredericton. For thirty years he was one of the representatives for York County in the House of Assembly. He died in 1821 at the age of sixty-three years.

7. John Coffin, one of the members for King's County, and James Glennie, a member for Sunbury County, fought a duel, in which the latter was wounded. A neighbor called to inquire about Mr. Glennie, and remarked, "Pity he fought," upon which Mrs. Glennie said, "If Glennie had not fought Coffin she would have."

8. General Carleton was in England, and Mr. Ludlow as Senior Councillor was acting President and Commander-in-Chief.

CHAPTER V.

HON. JOSHUA UPHAM.

Joshua Upham was born in Brookfield, Massachusetts, in 1741. He was a son of Dr. Jabez Upham, who practised medicine till his death in 1760. Joshua Upham graduated at Harvard College in 1763. The names in the college catalogue were then arranged in the order of social rank. After the name of Upham came those of Jonathan Bliss, afterwards Upham's brother-in-law, and Sampson Salter Blowers. Joshua Upham began the study of law in Brookfield, and won much distinction at the Worcester Bar, being greatly honored in his profession, and greatly reputed for public spirit as a citizen. Mr. Upham married a daughter of Hon. John Murray (1) of Rutland, Massachusetts. When the Revolutionary war commenced, he sided with the Crown, and entered on a military life in the King's American Dragoons. Following is a list of the officers in that corps: Lieut.-Colonel, Benjamin Thompson; Majors, Daniel Murray and Joshua Upham; Chaplain, Jonathan Odell; Surgeon, Adino Paddock; Captains, James Fulton, William Stuart, Philip Skinner, John Murray, Robert Murray, and Frederick Philips; Lieutenants, John Davidson, Simeon Jones, Isaac Tomlinson, Alexander Stuart, and Samuel Tarbell; Quartermasters, John Briggs, William Wilbour, John Barker, John Thompson, William Prince, Gabriel Palmer, Edward Sands, and Peter Sacket; Adjutant, Arthur Nicholson. In 1781 Major Upham was in command at Lloyds' Neck, Long Island, N. Y. The

place was attacked by a party of French and captured. Of the military character of Major Upham, Francis Green, a Massachusetts Loyalist, wrote Ward Chipman to the following effect:

"I am always pleased to be acquainted with an instance of that uniform heroism that hath so honorably marked the military conduct of the Loyalists. I refer to that you take notice of under the command of Lieutenant-Colonel Upham, who is one of the many meritorious characters who ought not to be so long unnoticed. Such merit, if properly supported and employed would contribute to the good effect of vigorous and judicious exertions. He is a man I much esteem, whose recovery from his late dangerous illness I rejoice at, and to whom when you have an opportunity, I beg you will present my good wishes and respect."

At the close of the war, Colonel Upham was military secretary and aide-de-camp to Lord Amherst and Lord Dorchester. The following letter from a competent critic also refers to Judge Upham in his judicial capacity in complimentary terms:

BRISTOL, England, May 5, 1783.

DEAR CHIPMAN,—

I have received a letter from my dear son Jonathan at Halifax. He writes me our friend Upham's life is still very precarious. I pray, however, he may live many years, but if fate has otherwise determined, what think you of Bliss going on the Bench and you being appointed Attorney-General? Should a removal to the Bench not meet with Mr. Bliss' wishes, what think you of my being appointed one of your judges? I assure you I should like it of all things. I should feel more at home as a judge in a Court of Common Law than a judge of Admiralty. I don't like the idea of deciding by my sole "*ipse dixit*." I like company, and I venerate juries. I should be happy in being a brother Judge to Upham. If he and I jumped in judgment, I should never have any

after qualms. Tell him so. But Upham shall not die, and so there ends my imaginary scheme.

Yours as ever,

JONATHAN SEWELL, SEN. (2).

WARD CHIPMAN, ESQ.

Colonel Upham was appointed one of the first Puisne Judges and a member of the Executive and Legislative Council for New Brunswick. The first meeting which he attended as one of His Majesty's council was held on June 2nd, A.D. 1786. He took his seat in the Legislative Council for the first time February 16th, A. D. 1787.

Judge Upham drew a tract of land of one thousand acres at French Village, Hammond River, Kings County, twenty-three miles from St. John. He lived at his County seat, as did Chief Justice Ludlow and Judge Allen, finding a change in going the Circuits, and attending meetings of the Council and of the Legislature. From his residence at French Village, Judge Upham wrote to Ward Chipman a letter which gives some idea of the difficulties connected with travelling to and from the country circuits in the early provincial days. The letter reads thus:

FRENCH VILLAGE, October 17th, 1792.

DEAR SIR,—

Not all the fatigues of the Westmorland Circuit, the storms of a week when there, the mud and mire through which I passed going and returning have so much distressed me as the great storm of rain since my return, and I am tortured with my rheumatic pain, and am very uncomfortable in so much that I know not when I must again apply that sovereign remedy, the Cumberland road, but first I shall most certainly take a trip to St. John. Did you go to Fredericton the last Term? Ah, poor Studholm! Who will succeed him in the Council? When I depart also what will be said? Be it so far so, it must be. I have not seen the papers which I am told by Colonel Sower (3) contains an account of the Westmorland Circuit. Have you any news worth communicating?

I do not ever see the St. John papers. Has our friend Colonel Leonard returned? The people here have fixed on next Thursday to repair the roads.

I have the honour to be,

WARD CHIPMAN, ESQ.

JOSHUA UPHAM.

Subsequent to the death of Judge Putnam in 1789, there was for some time no resident Judge at Saint John, as the Chief Justice and two Puisne Judges resided in York, and Judge Upham resided in Kings County. In 1796 the House of Assembly upon a representation of the facts resolved,—

That as the residence of the Judges are at inconvenient, and at some seasons of the year inaccessible, places, far removed from the seaport and commercial towns, and other most valuable and ancient settlements in this province, may occasion great expense and delay, and sometimes a failure of justice, an address be presented to His Excellency the Lieutenant Governor, humbly requesting that he will be pleased to direct one at least of the Judges of the Supreme Court to reside at St. John, for the furtherance of justice and the accommodation of the public. The resolution by order of the House was presented by Mr. Pagan, Mr. Gilbert and Mr. Younghusband to Lieutenant-Governor Carleton, who sent the following message in reply:

His Excellency observes, that the judges in England reside at or near the capital, and the want of resident judges in the many large towns and cities in that part of Great Britain has never been the subject of complaint; that commissioners for taking bail and affidavits being appointed in every County, His Excellency sees no reason to apprehend any failure of Justice from the want of resident Judges in the City of St. John, or at any other particular place in the Province, and that he conceives he has not any authority to give direction to the Judges respecting their place of residence.

By His Excellency's Command,

JON. ODELL.

A Court of Oyer and Terminer and general Gaol Delivery was held at St. John in December, 1789, when William Mooney Fitzgerald and John Clarke, both twenty-six years of age, were placed at the Bar charged with Burglary. They were found guilty, and on the fourth of December Judge Upham sentenced them to be executed on the eighteenth of the same month. From a narrative written to the Countess of Huntingdon by Rev. Charles W. Milton, who was present at the trial, the following information is obtained:

I heard the Honorable Judge Upham pronounce sentence upon them. It was to me an awful scene. When the prisoners came out of Court to return to gaol till the eighteenth of December, I delivered them a Bible. At half-past three I again visited them. I informed them I had heard that it was the determination of the Governor and Judge not to pardon them. They said they did not expect it. I was informed by Mr. Sower, the King's Printer, it was the wish of the Judge I should preach a sermon to the prisoners for their own benefit, and for the benefit of the young people and others. On December the 11th I visited them, and found both composed. They informed me that Dr. Byles, rector of St. John, had been with them, desiring he might preach to them. They told him that the minister who attended them was to preach to and attend them at the place of execution.

Sunday, 13th of December. After having preached this morning I went, according to the notice given to the public, to preach at the gaol at three o'clock. Notwithstanding the extreme cold, I found the gaol surrounded by a great concourse of people. The prisoners stood on a bank by the side of the gaol overlooking the Burial ground. I obtained a table to stand upon. Clarke asked permission to read a confession to the public. When he had done, we began with singing the 51st Psalm, L. M. (Dr. Watts). After prayer I preached from Romans vi, 23, "The wages of sin is death, but the gift of God is eternal life through Jesus Christ our Lord." Very great solemnity appeared throughout the whole assembly. Owing to the extreme cold I was almost speechless before I was done preaching. Many shed abundance of tears. It appeared that the Lord was with us, and we have

reason to believe that the sermon was not preached in vain. The prisoners appeared very much resigned.

December the 18th. At last the period arrived. I went to the prisoners again, and found them as much composed as if they were about going a pleasant journey. As the time for leaving the gaol had arrived we proceeded to the fatal tree, guarded by a party of troops in garrison. The prisoners walked on each side of me. During the time it took us to go from the gaol to the place of execution, I dwelt largely on the mystery and goodness of Divine Providence in letting them know the day of His visitation, and giving them space for repentance. When we came to the gallows, after a short address, I made a prayer, commending their souls to God in Christ. I took my leave of them, after which they ascended the ladder. The prisoners, after delivering brief addresses, were launched into eternity. More solemnity was perhaps never observed any execution.

In the early years of the present century, in the parish of Shediak, on the road to Cocagne, three miles from the present "Church of St.-Martins-in-the Woods," stood the small Block House built by Peter Casey and sold to a Mr. Atkinson, who mortgaged it to a Mr. Barry of Halifax. At that time there were only a few English families living at Shediak, viz., William Hanington (5), Samuel Cornwall, Simeon Jenks, Amasa Killam and Jonathan Babcock. The French had a small chapel at Grand Digue. As there was no Protestant place of worship, Mr. Hanington read the Church of England service in his house, with sermons of Bishop Wilson of Sodor and Man. In the summer of 1804 a revival took place among a few Baptist families. The revival meetings were held on Sunday evenings, and later on, Tuesday evenings. On one occasion two young men, on their way to Prince Edward Island, stayed over night and preached until morning. Two of Mr. Hanington's sons, William and John, were there, but they were forbidden by their parents to go again. In January,

1805, Jacob Peck came through from Shepody and preached, followed by Sarah Babcock, daughter of Amasa Babcock and Sarah Cornwall. The Babcock woman fell into a trance and began to prophesy the end of the world was at hand. As no one present was able to take down what they had to say, word was sent to Mr. Hanington to come and take their depositions, as they were supposed to be dying. He refused to go, saying, "It was all a delusion, they wanted mad houses, not meeting houses." The messenger returned telling him, "These girls had something to say before they died, and they wanted it written down." His son William was sleeping in the next room, and heard his father say to his mother that "he had better go, for perhaps he could convince them of their error." It was in the middle of the night, and he found the girls lying on a bed, and Jacob Peck walking to and fro saying, "there is my epistle," pointing to them. The prophecy, so called, was committed to writing. The purport of it was, Mr. Hanington was to be converted, and Jacob Peck and the prophetess were to convert the French.

On the road to Cocagne Amasa Babcock lived, a man in middle life, with a wife and nine children, the eldest twenty, and the youngest an infant. His sister, Mercy who had been married to a man not then living with her, was one of the family. She was of a melancholy disposition, and not allowed to eat with the family. Mr. Hanington had a liking for Babcock, and bought a place for him upon the understanding that he was to be paid in gaspereaux, which Babcock was to catch. In the month of February the revival was kept up for a week, night and day. Mr. Hanington had given Babcock some young cattle to winter for him. Poirier, a Frenchman, told him his cattle were suffering for want of food. Upon

Mr. Hannington telling Babcock this, the latter replied, "The Lord will provide." Mr. Hanington told him if he did not go home he would take the cattle from him. Babcock went home that night, and took his brother Jonathan with him to grind grain in a handmill. Jonathan began to grind, and Amasa took the flour and sprinkled it on the floor saying, "This is the bread of Heaven." According to his wife's statement Amasa took off his shoes and went out into the snow crying out, "The world is coming to an end, and the stars are falling." He came back and arranged his family on a long bench against the wall, the eldest girl at one end, and his wife and youngest child at the other. He then took a clasp knife and began to whet it on a whetstone. Going over to his sister Mercy he commanded her to remove her dress, get on her knees and prepare for death, for her hour was come. He next ordered his brother Jonathan to strip himself, and so infatuated were they that both obeyed. Amasa then looked out of the window several times, laid his knife down on the floor on top of a whetstone calling out, "The cross of Christ." He next went over to his sister and stabbed her fatally with the knife. This brought all to their senses. As soon as Jonathan saw the blood flow, he opened the door and fled naked to the house of Joseph Poirier, a quarter of a mile away. There he was supplied with clothes, and went to Mr. Hanington's house, and aroused him by crying out, his brother Amasa had stuck his sister with a knife. Mr. Hanington told him he was as guilty as his brother. At this time there was no magistrate at Shediak, and Mr. Hanington refused to arrest Amasa Babcock, but finally determined to go to his house. As there were no public roads he put on snow shoes, and started for Joseph Poirier's house

about two o'clock in the morning. When he arrived there he asked where his brothers Pascal and Chrysotom were. The answer was that they were at their father's. He went there and asked the two sons to go with him. They went, and on entering the house, they found Amasa Babcock walking about with his hands clasped. Mr. Hanington told the Poirier boys to seize him. He resisted, and asked what they were going to do with him. The answer was, "He was to be held a prisoner." Babcock then cried out, "Gideon's men arise." His two younger sons, Caleb and Henry jumped up, but were made to sit down. On asking Mrs. Babcock if her sister-in-law was dead, she said "yes." Some of the English people came about sunrise, and the body was found in a snowdrift, where Babcock had taken it. After strapping Babcock's arms he was taken to Mr. Hanington's. When there he cried, "Aha! Aha! Aha! It was permitted." The necessary papers were got out on information given by Jonathan Babcock as an eye-witness of the crime, upon which Amasa Babcock cried out, "These are letters from Damascus, send them to Damascus," evidently alluding to Saul's persecution of the Christians. He was then taken over to Amasa Killam's, where as he became quite crazy at intervals, he was placed on a bed, his arms pinioned and fastened down on the floor. After the weather got better, the third day, they put straps around his arms, placed him on a light sled, and snowshoed to Dorchester, hauling the sled by hand. Babcock was indicted for the murder of his sister Mercy, and upon a true bill being found, he was tried at a court held at Dorchester on the fifteenth day of June, A. D. 1805, before Judge Upham. Ward Chipman, clerk of the Crown on the Circuit, was the prosecuting officer, and the trial lasted six

hours. The jury, after being out half an hour, returned into court with a verdict of guilty. The prisoner was sentenced to be executed on Friday, the 28th day of June. The gathering at the trial was large, and all were satisfied of the justness of the verdict and the sentence.

Thus ended an affair which attracted a great deal of attention at the time, principally owing to the facts, and that the motive of the perpetrator of this terrible crime, although vague, was not vulgar or sordid, and was apparently based upon a fanatical misconception of religious duty. Contrasting this case with cases of the same nature occurring in modern times, the most striking feature connected with the former is the apparent absence of any attempt to contend that Babcock was not responsible for his hideous act. Although much may be said against the undue use of refined arguments tending to relieve accused persons of a criminal intent, when it obviously exists, or of criminal responsibility which should not be denied, there can scarcely be a question that no tribunal of to-day would hold one in Babcock's position guilty of murder, or would be justified in so doing.

The residence of Judge Upham during the last year of his life was on the Kennebecasis river, three miles above the village of Hampton. In the summer of 1807 he left his home in a canoe for St. John to take passage to England, at the request of the Judges to lay before the government their claims for an increase of salary. The mission was successful, the Puisne Judges' salaries being raised from three hundred pounds to five hundred pounds, and the Chief Justices's salary from five hundred to seven hundred pounds sterling. Judge Upham did not live to return and enjoy the fruit of his mission, for he

died Nov. 1st, A. D. 1808, in his sixty-eighth year. His widow subsequently submitted a memorial to the authorities in the following form:

To the Right Honorable the Lord Commissioner of His Majesty's Treasury:

The memorial of Mrs. Upham, widow of Joshua Upham, late one of the assistant Judges of the Supreme Court of His Majesty in the Province of New Brunswick,

MOST HUMBLY SHEWETH:

That the said Joshua Upham, late husband of your memorialist, held the said office of assistant justice of the said Court from the organization of the said Province in the year 1784 to the year 1808, upon a salary of three hundred pounds sterling a year; that this salary being altogether insufficient for his support, he in the year 1807 went to England upon leave of absence to solicit an increase of his salary; that His Majesty was thereupon most graciously pleased to augment the same to five hundred pounds sterling per annum, soon after which, to wit,—on the first day of November, 1808, the said Joshua Upham died, leaving your memorialist and a large family of children, many of them very young, without the means of support; that his successor was appointed the 5th day of April, A. D. 1809, and received the salary annexed to the said office from that time, and that the vacant salary for five months between the death of the said Joshua Upham and the said fifth day of April remains yet unappropriated in the hands of Mr. Calvert, the agent of the Province; that the expense incurred by the said Joshua Upham during his residence in England, and a long sickness there which terminated in his death, and for the support of his family in America, involved him in great difficulties, and left your memorialist and her family in circumstances of great embarrassment.

Your memorialist therefore earnestly prays your Lordships will be pleased to direct that the unappropriated salary for the period above stated may be granted to her to relieve her from pressing difficulties under which she labours by reason of these premises.

And in duty bound will ever pray.

MARY UPHAM (6).

St. John, N. B., 9th June, 1809.

The British government, in response to the prayer of the memorialist, granted her the five months' salary.

In further recognition of what must be considered an entirely proper claim, at the session of the Provincial Legislature held in 1810, the following resolution was adopted:

Whereas, the Honorable Justice Upham, now deceased, did nearly at the close of his life, at great inconvenience and expense, leave his family and go to Great Britain for the purpose of soliciting an augmentation to the salary of the Judges, which was then much too small for their support; and

Whereas, There is good reason to believe that principally by his solicitation and representation the late addition was made so necessary for the dignity and independence of the Judges; and

Whereas, The said Justice Upham closed his life in England shortly after the augmentation took place, and received no remuneration for his expenses or any compensation for his services;

Therefore resolved unanimously, The sum of two hundred pounds be granted Mrs. Mary Upham, the widow of the said Justice Upham, and also the further sum of one hundred pounds to Miss Elizabeth Upham, his eldest daughter.

The first wife of Judge Upham was a daughter of Honorable John Murray. She died in New York in 1782, the last year of the war. His second wife was a daughter of the Honorable Joshua Chandler, a Connecticut Loyalist, whose property in New Haven, which he valued at over twenty-five thousand pounds, was confiscated. In March, 1787, Mr. Chandler crossed the Bay of Fundy from Annapolis to meet the commissioners on Loyalists' claims at St. John, and in a violent snow storm, missing the entrance to the harbour, was wrecked on Musquash point, about nine miles below the city. He perished by a fall from a precipice, then in his fifty-ninth

year. His daughters Elizabeth and Mrs. Grant, widow of Captain Grant, and his son William, who had been a captain in one of the Provincial regiments, perished from cold and exhaustion. In the rural cemetery, St. John, in the Botsford plot, is a tablet in memoriam of Joshua Chandler, his son and two daughters. The wife of Amos Botsford was also a daughter of Joshua Chandler.

Mrs. Upham had six slaves, which she inherited from her father. One, Luke, was convicted and executed at St. John in 1802, for the murder of a girl by the name of West, on the old Westmorland road, about a mile and a half from the city. He was a stalwart negro, twenty-three years of age. Judge Upham had sent him to the city on horseback to do some business. The girl was out picking berries, and as she did not return, search was made, and her body found. Luke returned home. As it was known he had been in the city, suspicion fell on him. When charged with the crime he denied it, but being hurriedly asked the question what he did with the knife, answered, "Hid it under a stump, massa." This led to its discovery. Further evidence was obtained from the shoe marks of the horse. The negro was brought to the city, tried, and convicted, and eventually confessed the crime. He frequently accompanied Judge Upham to Fredericton and on the Circuits. On one occasion he remarked to an old Scotchman, if he thought master would sell him he would kill him.

The following cut from a newspaper, although in the ordinary form, is interesting by reason of its age:

NOTICES.

All persons having demands against the estate of the Honorable Joshua Upham, deceased, are requested to present

their accounts for payment within six months from the date hereof; and all persons indebted to the same, are required to make immediate payment to

MARY UPHAM, *Executrix.*

WM. BOTSFORD,

ISAIAH SMITH,

Executors.

Norton, 31st July, 1809.

At the time of Judge Upham's death, the farm at French Village, Hammond River, belonged to him, and was retained as a portion of his estate until its sale under the following advertisement:

TO BE SOLD,

AND IMMEDIATE POSSESSION GIVEN.

That valuable farm containing upwards of four hundred acres of land belonging to the late Judge Upham, situated on the Hammond River, twenty-three miles from St. John. Also the stock and farming utensils. The property is too well known to require any description here. One hundred and fifty pounds to be paid down on possession being given, and the remainder in payments of one hundred pounds per annum, with interest till the whole is settled. Inquire of *Courier* office, St. John.

St. John, N. B., 3rd September, 1814.

Mrs. Upham died in 1826. Miss Elizabeth Upham, a daughter by the Judge's first marriage, who was six years old at the time of the evacuation of Boston in 1776, and in her sixteenth year when her father arrived in New Brunswick in 1786, died at Fredericton in her seventy-fourth year in 1844. Judge Upham by his marriage with Miss Chandler, had one son and three daughters, who survived their mother. Sophia Livingston married Alexander Winniett of Annapolis, Nova Scotia. Kathron Elizabeth Putnam married George Pagan, a merchant of Kent, New Brunswick; Frances married in 1829 John Wesley Weldon, Barrister-at-Law, Richibucto, afterwards

a Judge of the Supreme Court of New Brunswick. Mrs. Weldon died in 1844 at the age of forty years. Charles Wentworth Upham was born on the farm near the Kennebecasis river, May 4th, A. D. 1802, five years before his father bid farewell to his family for the last time. During his last visit to New Brunswick he visited the old homestead. In his fourteenth year a relative, Phineas Upham, of Boston, visited St. John, and gave him an invitation to reside with him, which he gladly accepted. As he had a liking for study he prepared for college, and in 1817 entered Harvard, and graduated in 1821 with high honours (7). He chose the ministry, and in 1824 became the colleague of Rev. Dr. John Prince of the first church, Salem, where he remained for twenty years. His voice having failed him, he retired from the ministry. From 1849 he was a member of the Massachusetts Legislature.

In early life Mr. Upham married a sister of Dr. Oliver Wendall Holmes. He died at Salem, June 15th, A. D. 1875, at the age of seventy-three years. A funeral service was held in the church of which for twenty years he was pastor. Dr. George E. Ellis delivered an address, of which the following is the closing passage: "Of late years as I have spent the weeks of summer nearby, it has been one of my richest resources of improvement and pleasure to visit him (Mr. C. W. Upham) in his calm retirement, waiting for life's decline. The elaborate biography of Colonel Pickering, so rich in its presentiment of a career of singular nobleness, and so instructive in its delineations of the war epoch and the cradle days of our nation, was the work alike of his failing bodily strength and the ripening of his mental and moral powers. And with what a serene spirit, with what a patient consciousness of its progress, with what a truth-

ful belief that while it was change it was not extinguishment of being, did he note the decays of nature, and nestle in the solace of his home. He sat surrounded by his beloved books on their shelves, and knew that there was something as unexhausted and enduring in himself as in them. His pleasant retrospects transfigured themselves into cheering prospects. And now as you the last time from this his pulpit, look upon the contents of this casket, I see the refined beauty of his lineaments and features as yet in their upwasted nobleness of dignity. The forehead and brow still show the measure and compass of the mind once tenanting and serving it. The kindly greeting of his open eye, and the gentle sweetness of his voice, and the chastened moderation of his speech on themes of high import—these are now to be memories with you and me.”

In 1877 Dr. Ellis published a memoir of Charles Wentworth Upham, with a portrait which bears evidence of the greatness of the man.

The year 1808, the quarter centennial of the landing of the Loyalists, was remarkable for the death of three of the first Council, viz., Gabriel G. Ludlow, Joshua Upham, and George Duncan Ludlow. The death of the last two also removed from earth the sole survivors of the original Judges of the Supreme Court, Judge Putnam having died in 1789, and Judge Allen in 1806. Of the first Council only three were left, viz., Edward Winslow, William Hazen, and Jonathon Odell. Of the members of the Bar at its organization there were Jonathan Bliss, Ward Chipman, Amos Botsford, and Samuel Denny Street, and of the admissions to the Bar to practise in New Brunswick, Thomas Wetmore, John Murray Bliss, Charles Jeffrey Peters, William Botsford, George

Leonard, Thomas Horsefield Peters, William Franklin Odell, Harris Hatch, and Ward Chipman, Jr.

NOTES.

(1). Col. John Murray of Rutland, Massachusetts, left Boston in 1776, with his family for Halifax. When peace was concluded he settled at St. John. In the Hazen house, now occupied by J. Douglas Hazen, Esq., M. P. P., there is a fine portrait of Col. Murray, by Copley, in the full dress of the day. There is a hole in the painting, and the tradition is that one of a party of Rebel soldiers which had failed to find him pierced the canvas with a bayonet. He enjoyed a pension of two hundred pounds sterling till his death. In person he was tall, being about six feet three inches in height. He was married four times. In the rural cemetery in St. John is a monument on which is the following inscription: To the memory of John Murray, Esquire, who was born in Ireland, the 22nd day of November, 1720, and died in this city, August 30th, 1794."

(2.) Jonathan Sewell was born in Boston in 1728, and graduated at Harvard in 1748. He studied for the Bar, and in 1767 became Attorney-General of Massachusetts Bay. In 1768 he resigned to take the office of Judge of the Court of Vice Admiralty, with jurisdiction including Nova Scotia. In 1769 he commenced a suit in behalf of a negro slave to obtain his freedom, which terminated in his favor. This was previous to the historic slave case of Somerset in England. When hostilities began in 1775, Mr. Sewell was living at Cambridge (subsequently the headquarters of Washington), which place he was thereupon forced to leave, and to find quarters in Boston. His wife was a daughter of John Quincy,

and a sister of the wife of John Hancock, the first Governor of the State of Massachusetts. They had two sons, Jonathan and Stephen. At the evacuation of Boston in 1776, Mr. Sewell and his family went to England, where they resided until they left for New Brunswick in or about the year 1786. During that period he received from the British Government his salary as Judge of the Vice Admiralty Court. He was, however, subsequently superannuated for the reasons stated in the following letter:

SIR,—

The Lords Commissioners of His Majesty's Treasury having had under consideration the nature and constitution of the Vice Admiralty Court at Halifax, of which you are judge, and it having been represented to their Lordships that the general Vice Admiralty Court of that Province has an original as well as an appellant jurisdiction in all causes under cognizance of the Provincial Courts of Quebec, Nova Scotia and New Brunswick, and that it appears with respect to its original jurisdiction superfluous, and as to the appellant (wherein its sentences are subject to a further appeal) to be rather productive of unnecessary expense and delay than of any advantage to the public. I have it therefore in command to acquaint you that for the above reasons My Lords have moved the Lords of the Admiralty to give the necessary directions for abolishing your said offices, but that in consideration of your services My Lords have been pleased to direct warrants to be prepared to be submitted to His Majesty for paying your salary to the 21st day of July last, and for granting you from that period a pension of two hundred pounds per annum out of the monies arising from the sale of old naval stores.

I am, sir, yours,

GEORGE ROGERS.

JONATHAN SEWELL, ESQ.,
Treasury Chambers, London.
 2nd of August, 1787.

(3). Christopher Sower, who was a Pennsylvania Loyalist, was Postmaster General of New Bruns-

wick and printer to the King's Most Excellent Majesty. The following is an approximate facsimile of one of the issues of his paper:

VOL. I.	THE	NUMBER I.
ROYAL		GAZETTE
AND		THE
NEW BRUNSWICK		ADVERTISER

TUESDAY, OCTOBER 10, 1785.

 ST. JOHN: Printed by CHRISTOPHER SOWER, Printer to the KING'S MOST EXCELLENT MAJESTY, at his Printing Office, Dock Street.

The newspaper was a four-column, 10x17 weekly issue. The following notice gives some idea of the early postal facilities in the Province:

POST OFFICE.

Letters will be delivered every day, except Sunday, from 9 a. m. to 3 p. m. A mail will be made up for Fredericton every alternate Wednesday.

CHRIS. SOWER,
Postmaster.

St. John, N. B., 1st May, 1787.

In 1790 Christopher Sower purchased from Mr. Tabideau, at Hammond River, 300 acres of land, and shortly after, 700 acres adjoining. His place, which he named Brookville, has in recent years been occupied for the purposes of the Provincial Stock farm. In 1878 one of the Tabideau descendants from Madawaska visited the place, and while there expressed a wish that the old burial plot of the French on the farm might not be disturbed. Christopher Sower erected a double log two-story house for a residence and printing office. The Journals and Acts of Assembly of 1793 and 1794 and the *Royal Gazette* were printed there. In 1795 Mr. Sower resigned from the office of Deputy Postmaster General, and at

the general election in 1796 he unsuccessfully contested the County of Kings. In 1799 he visited Baltimore and fell dead on the street from a fit. He was short and so corpulent that when sitting he could hardly see his feet. In 1806 Mrs. Sower sold the Brookville farm to Caleb Wetmore, and with her family moved to Baltimore.

(4). Rev. Mr. Milton was one of the Countess of Huntingdon's mission, sent to New Brunswick in 1768. He seems to have been of good repute, Judge Upham having requested him to preach to the prisoners. He subsequently moved to the United States, and died at Newburyport, Mass., May 1, 1837, at the age of 70 years.

(5). William Hanington was the father of the late Hon. Daniel Hanington and William Hanington. The latter a few years before his death related the incidents in connection with the Babcock tragedy to the Rev. Edwin S. W. Pentreath, Rector of Moncton. At the time of the tragedy he was only in his tenth year, but it left an impression which time never removed.

(6). Judge Upham's grandson, the late Charles W. Weldon, K. C., D. C. L., when in London in 1887., visited the Marylebone Church grave yard, in which his grandfather was buried over eighty years before.

(7). After the death of Judge Upham, Spencer Perceval, then Chancellor of the Exchequer, who had formed a very high opinion of the Judge, showed substantial acts of kindness to his widow and children. A few days before his assassination in 1812, as he was entering the House of Commons, he sent four hundred silver dollars with books and other valuable gifts for the education of Charles Wentworth Upham.

CHAPTER VI.

HON. JOHN SAUNDERS.

The fourth Puisne Judge for New Brunswick was Hon. John Saunders. Following is an account of some incidents in his early life, as written by himself:

I was born in Virginia, then a British colony, and bred to the profession of the law. At the commencement of the American Rebellion the Earl of Dunmore, then Governor-General, being anxious to support His Majesty's just rights, which were then openly and avowedly attacked, issued a proclamation calling upon all His Majesty's subjects within his government to aid him to maintain his authority. Conceiving it to be my bounden duty, I did not hesitate a moment, but immediately left a valuable establishment and obeyed the call, and though at that time a very young man, I was appointed a captain, and ordered to raise my company, which I did in a few days, and repaired with it to the Great Bridge, a post then occupied by a detachment of the 14th Regiment, where a severe battle was fought soon after. From this time to the end of the Rebellion I was constantly and actively employed in the most dangerous services, in the course of which I received two severe wounds. At the end of the rebellion I was sent to England in His Majesty's frigate "Diomedé" with all the invalids of the army, where I arrived in December, 1783. Having executed this duty, I recommenced the study of the law and entered myself of the Middle Temple, and was called to the degree of Barrister; and in the beginning of the year 1790 I was appointed an assistant Judge of His Majesty's Supreme Court of Judicature of New Brunswick, my commission giving me the same powers and the same duties as those of the Judges of the King's Bench, Common Pleas, and the Barons of the Exchequer in England. The appointment was intimated to the Lieutenant Governor in the following terms:

WHITEHALL, 8th April, 1790.

SIR,—

I have received and laid before the King your letter of the ninth of November last, and His Majesty approves of your

conduct in not proceeding to fill up the vacancy on the Bench of Judges occasioned by Mr. Putnam's death, till you should receive His Majesty's command thereon. His Majesty has been pleased to appoint John Saunders, Esquire, to supply the present vacancy on the Bench.

I have the honour,

W. W. GRENVILLE (1).

LIEUT.-GOVERNOR CARLETON.

Before leaving for New Brunswick Judge Saunders, then in his thirty-sixth year, married Miss Charters, receiving with her five thousand pounds, and three hundred pounds during her life. After the marriage no time was lost in embarking for New Brunswick. Judge Saunders chose Fredericton for his home. He took his seat on the Bench in February Term, 1791. He had to the close of his life a fine county seat on the River St. John, in Prince William, called the Barony.

Stephen Sewell, in the following letter to his brother, Jonathan Sewell, at Quebec, intimates that it was through Governor Simcoe's influence that Judge Saunders was appointed to the Bench:

FREDERICTON, 3rd May, 1791.

DEAR JONATHAN,—

I arrived here Saturday last with an intention to get admitted this term, which I have not the smallest doubt of effecting, but as I want a month of my time and my age, I brought a number of letters to the Judges from Judge Upham and the lawyers, in consequence of which the Chief Justice and Judge Saunders (Judge Allen I have not seen) shew the utmost willingness to serve me. The Chief Justice advises me to turn my thoughts to the new province of Upper Canada, and that General Simcoe will be Governor. Judge Saunders says he is his most particular friend, having been in the same regiment with him. It was through Simcoe the Judge got his office here. The Chief Justice had no doubt he could get me letters of recommendation from Judge Saunders to General Simcoe, which I could take with me to Canada.

I am just returned from Court, a much greater man than I was when I wrote the foregoing; therefore heed you, for I am an Attorney of the Supreme Court of Judicature of the Province of New Brunswick. The Chief Justice, with Judge Allen and Judge Saunders, think I had better take with me letters for Simcoe; at any rate, says the Chief Justice, you'd better have two strings to your bow than one. I have nothing new to communicate, and I can think of nobody and nothing but self. You will thank me to add here that I am your affectionate brother,

STEPHEN SEWELL.

JONATHAN SEWELL,
Quebec.

The following certificate to Mr. Robert G. Wetmore (2) of his admission as an Attorney discloses the solicitude of the Court under the sanction of the Legislature, and in conformity with the use in the mother country at that time to provide for the public needs in the practice of law only those who were thoroughly loyal to the British crown, and thoroughly hostile to His Holiness the Pope and his teachings. It was necessary to take all the oaths mentioned until the passage of the Imperial Act (3) 10, George IV, Cap. 7, after which Roman Catholics were admitted without being called upon to take the oaths against transubstantiation and Popery:

IN HIS MAJESTY'S SUPREME COURT OF JUDICATURE FOR THE PROVINCE OF NEW BRUNSWICK.

EASTER TERM, in the thirty-fifth year of our Sovereign
Lord King George Third of Great Britain.

It appears to this Court that Robert Griffith Wetmore, of Gagetown, in Queens County, gentleman, is duly qualified to act as an Attorney of this Court, and he having this day in open Court taken the oaths of Allegiance and Supremacy and Abjuration, and taken and subscribed the declaration against Transubstantiation and Popery, and also taken the oath of Attorney, let him be admitted an Attorney of said Court, and his admission be enrolled.

Given under the seal of the said Court. Dated this sixth day of May, in the year of our Lord one thousand seven hundred and ninety-five.

GEORGE D. LUDLOW,
ISAAC ALLEN,
JOHN SAUNDERS.

Sworn in Court and enrolled this sixth
day of May, A. D. 1795.

1

At Government House, Fredericton, a ball was given in 1795 by His Excellency the Lieutenant Governor and Mrs. Carleton, when a brilliant assembly of ladies and gentlemen, who by their most expressive satisfaction, and by an elegant display of taste and fashion, manifested their respect for the Queen. Governor Carleton was unusually animated through the whole evening, and by his affability diffused a general ease and gaiety through the whole company. Mrs. Carleton also was in high spirits. Her engaging attention and smiling courtesies at the same time that they evinced a most lively interest on this festive occasion, were highly pleasing to her loyal visitants, and added much to the happiness and hilarity of the evening. The ball was opened a little after eight o'clock by Mrs. Saunders and Michael Cooke (4), Esquire, and the dancing continued with sprightliness until twelve o'clock, when the company were conducted to the banqueting room to partake of a sumptuous repast, as remarkable for its elegance as for the great rarity and delicacy of its viands. Having refreshed themselves, the company returned to the ball room and recommenced dancing, and a little after three o'clock began to retire, highly pleased and gratified with the festivity, hospitality and splendour of the evening's entertainment. Mrs. Carleton appeared in an elegant gown of tea-coloured satin, with a white satin petticoat

trimmed in shades of embroidered silk, her hair dressed in light curls and ornamented with pearl pin with a white satin bandeau with "Vive le Roi" elegantly embroidered on it, and fastened with a brilliant button. On the right side ostrich and peacock feathers blended. She had a large and handsome bouquet. Mrs. Saunders, wife of Judge Saunders, was in Court uniform, a rich dress, the body and train of ermine satin, with a cape trimming in Vandyke points richly embroidered in silver; an elegant gold muslin petticoat, with a sash of the same, falling across the body from the left shoulder and fastened on the right side with a bow of gold muslin and white satin ribbons in a fanciful manner; an epaulet of gold and silver bullion suspended from the shoulder by a beautiful button of embroidered foil; brilliant pendulum ear-rings in gold, the cape of white crape with a blue crape bandeau, which projected over the hair with a very pleasing effect. The cape was trimmed with blonde lace and ornamented with a fashionable fancy bouquet de plume and gold wheat. Her hair was dressed in light curls and a bouquet of jessamine and carnation.

His Majesty's ship of war, *Zebra*, Captain Vaughan, having on board His Royal Highness, Prince Edward, attended by Captain Vezey, one of his aides-de-camp, arrived at St. John from Digby at four o'clock, P. M., on the 19th day of June, A. D. 1796. A Royal salute was fired from Dorchester battery as the ship passed. At six o'clock the ship fired a Royal salute, and His Royal Highness came ashore at the public landing, which was crowded by a great concourse of loyal subjects, eager to testify their joy. Never were greater satisfaction and pleasure evinced than in the circumstances of all present

at seeing this celebrated and accomplished son of their beloved and most gracious sovereign. The moment the barge touched the shore, the concourse present gave three ringing huzzas, which were dictated by hearts exulting with joy in the happy event. His Royal Highness was received at the landing by Governor Carleton and his suite, and a great number of public officers and citizens. Immediately upon his landing Royal salutes were fired by the artillery company of the city, and from the armed brig *Union*, and His Royal Highness with that complacency and dignity, which so strongly marked his character, passed between the lines of the military and the general populace extending from the landing to the top of Chipman's hill, and proceeded to the house of Mr. Chipman, which had been placed at his disposal. He was here received by the cadet and city artillery companies of militia under arms, which presented a good appearance, and with which the distinguished visitor appeared to be much pleased. At seven o'clock in the evening an address was presented to His Excellency by his Worship the Mayor and the members of the common council. On Saturday evening at ten o'clock, the 21st of June, 1796, His Royal Highness, Prince Edward, and Governor Carleton, with their respective suites, arrived at Government House, Fredericton. The road from the shore to the house was lined on both side by the troops in garrison and Captain Jarvis's company of the Fredericton militia. The town was brilliantly illuminated. At daylight the next morning a Royal salute was fired from the battery. At two o'clock His Royal Highness held a levee, after which he was pleased to receive addresses from His Majesty's Council, from the magistrates and from other inhabitants of the County of York. He then proceeded to inspect the

King's New Brunswick Regiment. Early on Monday morning His Royal Highness and Governor Carleton embarked on their return to St. John, where they arrived at ten o'clock in the evening, after passing through the falls. A captain's guard from the detachment of the King's New Brunswick Regiment in garrison was in waiting to receive them. The next day His Royal Highness inspected the several batteries and ordnance stores, and at three o'clock in the afternoon held a levee at the house of Mr. Chipman, then the Solicitor General of the Province. There were present the principal magistrates and citizens and officers of the troops in garrison. The Prince by his affability and dignified attention and politeness created a most favorable impression among all present. About seven o'clock in the evening he was escorted to the public landing through a numerous concourse of people. The detachment of the King's New Brunswick Regiment stationed at St. John, was paraded at the same time and saluted as His Royal Highness passed. Upon his embarking from the wharf three huzzas were given, which were most graciously returned by His Royal Highness and those who accompanied him in the boat. A Royal salute was fired from His Majesty's ship *Zebra* upon his getting on board. As the ship passed the batteries a Royal salute was again fired, and the ship continued on her course to Digby. From there His Royal Highness passed through the country to Halifax.

Prior to 1821, the Regiments at St. John were stationed at Fort Howe, Portland. In 1808 the 101st was in garrison. On October 17th of that year Henry Baldwin, James Leiman, and Patrick McEvoy, privates in the Regiment, deserted. On the 25th the deserters called at the house of Ebenezer Scott at

Musquash, and inquired of his servant George Bourdett the way to Dipper Harbour. On seeing Baldwin with a musket, he suspected them of being deserters, of whom a party had been in pursuit. After pointing out to them the way to Dipper Harbour, Bourdett went over to Clayton Tilton, his master being away from home, and told him three men had passed, one of them being armed, whom he suspected of being deserters. Mr. Tilton went over to Mr. Scott's and got two muskets, one of which he gave to Bourdett, the other he kept for himself. The two with Frederick Shown, a servant of Tilton's, then went in quest of the supposed deserters, but without succeeding in finding them. On their return, however, they met them, they having mistaken the way to Dipper Harbour. Leiman, on seeing Mr. Tilton and the other two with him sat down, and soon after Baldwin and McEvoy came on. Baldwin asked Mr. Tilton if he knew the way to Dipper Harbour. The latter answered he did, but they should not go there. Leiman then asked him if it was his custom to stop people on the highway. He replied no, but he would not suffer such men to go on. Mr. Tilton and Bourdett brought the breeches of their muskets to the ground. Leiman thereupon pulled out a pistol from his breast and cocked it, saying to Baldwin, "Come back, these men will fire upon us." Bourdett then said to Tilton, "That man is going to fire; see he is pulling out his pistol!" Tilton then stepped up to Leiman and said, "There shall be no firing here," and Bourdett at the same time said, "We are not going to fire, we are not prepared to fire," meaning that their guns were not loaded. Baldwin then came close to Tilton and snapped his gun at him, but missed fire. Tilton then allowed them to pass by him. For some distance he

followed them and said, "You need not think I am afraid of you, for your gun is not loaded." Baldwin returned to within a few paces of Tilton and said, "Sir, I will let you know that I am loaded," levelled his musket, and discharged it at Tilton, causing a wound from which he died in a few hours. Baldwin then went back to Leiman and McEvoy, and loaded his musket again, obtaining the ammunition from Leiman. He ordered McEvoy to pick up Tilton's firelock, which the latter had dropped when wounded. The deserters after that took to the woods. They were taken some days later on an island in Passamaquoddy bay, while on their way to the United States, by a party of Charlotte County militia, and brought before a magistrate of that county, by whose order they were sent back to St. John for trial. At the St. John Circuit Court held in November, A. D. 1808, Judge Saunders presiding, and Ward Chipman being prosecuting officer, Henry Baldwin, James Leiman, and Patrick McEvoy, upon a true bill being found against them, were placed at the bar charged with the death of Clayton Tilton at Musquash.

Mr. Chipman laid it down as law that desertion from the King's armies in time of war is independent of the Mutiny Act, that by ancient statute it was felony without Benefit of Clergy, and that every subject is bound upon his allegiance to use his utmost endeavour to apprehend such deserters. Should any of a party of deserters kill any person attempting to apprehend them, every individual of the party is guilty of murder. On the cross-examination of witnesses for the crown it appeared that McEvoy seemed quite confounded when the gun was discharged, and was called on several times before he went to take it, and that he was rather passive than active through the whole proceedings. The three prisoners were

found guilty, and sentenced to be executed. Baldwin and Leiman after conviction expressed great anxiety that McEvoy should not suffer, as he had been persuaded by them to desert. Baldwin and Leiman were executed, but McEvoy, on account of the extenuating circumstances and his youth, was pardoned.

At this Court there were trials for petit and grand larceny. The common law distinction at the organization of the province was that stealing property to the value of twelve pence and under was petit larceny. While theft of property above twelve pence in value was grand larceny. The legislature in 1791 increased the amount for which petit larceny was chargeable from twelve pence to twenty shillings. Grand larceny was a capital offence until 1831, but within the benefit of clergy. The prisoner convicted of petit larceny was sentenced to receive fifty lashes, and the two convicted of grand larceny were sentenced to imprisonment for six months and to receive each fifty lashes three times. In neither case would the prisoners think justice was tempered with mercy.

THE MIRAMICHI RIOTS.

The early trade on the Miramichi was largely in square pine timber for the British markets, and fish for the West Indies, chiefly controlled by Halifax and Scotch houses. The logging and rafting was mainly conducted by people from the State of Maine, many of whom, after the season's work closed, returned to their homes. As the population through immigration increased, jealousy arose among those employed, culminating in 1822 in a riot so serious as to make it necessary to send a detachment of the 74th Regiment from Fredericton to quell the disturbance. In July a Court was held at Newcastle

by special commission, presided over by Judge Saunders. It continued fifteen days. Twenty prisoners were placed at the bar charged with riot and assault upon the sheriff and constables, the use of seditious words, forgery, highway robbery, and petit and grand larceny. Fifty-nine sentences were passed, a number received fifty lashes, and twelve stood in the pillory. It must have been a busy time with Sheriff Clarke, gaol delivery without a parallel in the judicial annals of the Province.

In February, 1822, Judge Saunders applied to the Lieutenant Governor to be appointed Chief Justice in the place of the then occupant of that office, who had long ceased to be able to discharge his judicial duties. His communication is as follows:

MR. BLISS,—

The Chief Justice, having become incapable through age and infirmity to execute the duties of the office, I beg leave to lay before your Excellency the following: I feel that I could appeal with confidence to your predecessors in this government, and that I now can to your Excellency to testify that I have ever during your and their administration of this government since my appointment in 1790 to the present time, a period of thirty-two years, always performed the various duties incumbent upon me zealously, faithfully and impartially to the best of my skill and ability, not only as a judge, but as a Privy and Legislative Councillor. I shall be entirely silent as to my principles as to Church and State, as they are so fully known to your Excellency, to whom I beg leave with the greatest respect to submit this my application, and to subscribe myself in great truth.

Your Excellency's most Faithful Servant,

JOHN SAUNDERS.

Fredericton, 28th February, 1822.

The death of the Chief Justice afforded His Excellency the opportunity to comply with this request,

of which he promptly availed himself, as appears by the following despatch to the home office:

ST. JOHN, N. B., 6th of October, 1822.

MY LORD,—

I have the honour to acquaint your Lordship that Jonathan Bliss, the Chief Justice of the Province, died on the first of October, and that the present reduced state of the Bench from this vacancy, and sickness of other members, induces me to make those arrangements which I had the honour of proposing to your Lordship in my letter of the 10th of March last, until His Majesty's pleasure should be known, viz.: John Saunders, Esquire, the senior Judge and Councillor, to be Chief Justice, and Mr. Edward J. Jarvis to be assistant Judge and a member of His Majesty's Council vice Mr. Saunders. The eligibility of these gentlemen for these situations respectively was made known to your Lordship in my communication of 10th of March.

My Lord, I have the honour, etc.

G. S. SMITH.

RIGHT HONOURABLE EARL OF BATHURST.

To this the Governor received the following reply confirming the appointment to the Chief Justiceship, but not that of Mr. Jarvis:

DOWNING STREET, London, 7th January, 1823.

SIR,—

Your despatch of 7th October last, communicating to me the death of Chief Justice Bliss, has been received and laid before the King. His Majesty has been pleased to confirm your appointment of Mr. Saunders to be Chief Justice, and has appointed Mr. William Botsford, the Solicitor General, to succeed to the vacancy on the Bench, occasioned by the promotion of Mr. Saunders, and Ward Chipman, Jun., to be Solicitor General.

I am therefore to desire on the receipt of this despatch the gentleman named may be put in possession of their respective offices.

I have, etc.

BATHURST.

MAJOR GENERAL SMITH,

Lieut. Governor.

The vacancy in the office of the Clerk of the Pleas occasioned by Henry Bliss, son of the late Chief Justice Bliss, leaving the Province to reside in England, was filled by the appointment to that office of George Shore (5). At the opening of the Supreme Court at Fredericton in 1823, Mr. Shore produced letters Patent appointing him Clerk of the Court. The Bench divided as to the right of the Governor to appoint to the office. Judge Chipman and Judge Bliss maintaining the appointment was in the Chief Justice, the previous one being made by Chief Justice Bliss. Chief Justice Saunders and Judge Jarvis held the patronage was in the Governor. The question was purely one of principle, for whether the honour of appointing was in the Chief Justice or the Governor, Mr. Shore would certainly have become Clerk of the Pleas.

In 1829 the British Parliament passed the Roman Catholic Emancipation Act, securing to persons of that faith the right to sit in Parliament. The year following the New Brunswick Legislature gave to all British subjects irrespective of creed the same privilege. On its passing the Legislative Council Chief Justice Saunders entered the following protest (6):

1st. Because the Roman Catholics do not, like their Protestant fellow subjects, acknowledge His Majesty to be the sole supreme head of the government, but consider themselves in spiritual matters to owe an exclusive allegiance to a foreign potentate, who has assumed to himself the altitude of infallibility, and upon the great power which he has derived from the influence of this dogma he has acted for centuries past to the present time, invariably making it subserve to the promoting his temporal interests, whenever times or circumstances enable him to do so. The conduct of the Roman Catholic Irish eminently illustrates the magnitude and influence of, and the disastrous effects resulting from this spiritual power, in the organized establishments in that country of

political clubs, in the illegal imposition and collection of taxes to enable them to enforce unjustifiable claims, in the numerous wanton and lawless acts of robbery, cruelty and murder committed by them upon His Majesty's unoffending Protestant subjects, in the unwarrantable interference of their priests in elections, and by their spiritual influence forcing their flocks to vote for such candidate only as they directed.

2nd. Because our wisest British statesmen have heretofore invariably held it to be unsafe and dangerous to our Protestant constitution to admit to equal rights that portion of His Majesty's subjects who make it a matter of conscience not to be bound by the same ties to His Majesty and to his government as his other subjects are.

3rd. Because His Majesty's present ministers in bringing forward the Roman Catholic or Relief Bill did not pretend to deny that there was danger in extending to the Roman Catholics equal rights with those of His Majesty's Protestant subjects, but that they found it necessary, as the Protestants themselves were divided in opinion upon the subject, to bring in the Bill in order to enable the administration more effectually to put down their illegal, insubordinate, and unconstitutional proceedings, which had been suffered by their predecessors to arrive at the then dangerous and alarming height.

4th. Because the Roman Catholics in this colony have not made any complaints, or attempted to show that they are in any manner oppressed or grieved by the present laws. It is therefore not only unnecessary but highly impolitic to pass such a law here, which cannot fail to nourish into vigour the influence of that, as to us now innoxious, dogma, and thereby introduce a separate organized body, actuated by the same spirit of hostility to our Protestant religion and government, which occasioned the commission of so many atrocities in Ireland.

27 February, 1830.

JOHN SAUNDERS.

On Saturday, the 24th of May, A. D. 1834, Hon. John Saunders, Chief Justice of New Brunswick, died at his residence at Fredericton, in the eightieth year of his age. He attended Court on the twelfth and thirteenth of the same month against the earnest solicitations of his family, who thought him too feeble to endure the fatigue. To their importunities he re-

plied with a sentiment which had been his guiding principle through life, "I must do my duty." On that day he was confined to his bed, and during the remaining brief period of his existence his bodily sufferings, though severe, did not draw forth a single murmur. He died as he had lived, a sincere Christian, and, whether viewed in his public or private capacity, left a bright example for imitation. On Thursday morning the body was conveyed to the Province Hall, and at two o'clock in the afternoon the funeral procession moved thence to the church, where the usual service was conducted. The procession from the church to the grave was in the following order: The companies of the 34th regiment as the firing party, the band of the 34th regiment, twelve constables with their staves, sheriff and coroner, sexton, clerk and organist, physicians, clergy, Lieut.-Col. Snodgrass, Major Greaves, Hon. F. S. Robinson, Hon. George F. Street, Hon Judge Bliss, Hon. Judge Chipman, chief mourners, members of the bar in full robes, undergraduates in King's College in their robes, the professors of King's College in their robes, militia officers, officers of the army, magistrates, members of the House of Assembly, members of the Legislative Council, members of the Executive Council, His Excellency the Lieutenant Governor. The procession was followed by a large number of people from Fredericton and vicinity and from various parts of the Province, all apparently anxious thus to show the high respect and esteem which they entertained for his memory.

In the old burial ground at Fredericton there is a massive monument on which is inscribed the following:

Sacred to the memory of the Honorable John Saunders, D. C. L., Chief Justice of New Brunswick, who was born June

1st, 1754, and died May 24, 1834, at Fredericton. On the commencement of hostilities between Great Britain and her American colonies, relinquishing the academical studies of his youth, he repaired to the Royal standard with a troop of dragoons raised at his own expense. Being subsequently transferred to the Queen's rangers, he was engaged during the whole of that unhappy conflict in the most arduous and dangerous service, in which he was twice severely wounded, and was present at most of the general battles; and the cavalry and flank companies of the detachment being placed under his commands, performed numerous brilliant and successful achievements.

At the conclusion of the first American war he returned to the land of his ancestors, entered at the Middle Temple, and was called in 1787 to the English Bar. In 1790 he was appointed one of the judges of the Supreme Court of New Brunswick where in 1882 he was elevated to the dignity of Chief Justice and president of His Majesty's Council. Endowed with a well informed and cultivated mind, a discriminating and sound judgment, and strict integrity of purpose, he heard with patience, weighed with deliberation, and decided with firmness; a staunch defender of the hereditary prerogatives of the Crown, he was not less regardful of the constitutional rights of the subject.

"Unpractic'd he to fawn; or seek for power

By doctrines fashioned to the varying hour."

was zealously conservative of the civil and religious institution of the monarchy. Distinguished for his patronage of agriculture and liberal education, his unaffected hospitality, and his uniform attention to the charities of domestic life, he left to his descendants a good and worthy name, and to his fellow colonists the example of nearly sixty years devoted with unspotted faith to the honor and interests of his King and country.

Erected 24th Nov., 1837, by his affectionate widow, A. M. J. Saunders.

This monument is also intended to commemorate the many virtues of Eliza Chalmers Flood, who was born on the 25th of May, 1794, at Fredericton, and died on the eighth day of January, 1821. She was a daughter of John Saunders, Esquire, late Chief Justice of this colony, and president of His Majesty's Legislative Council of New Brunswick, and wife of R. Flood, Esquire, lieutenant and adjutant of the

74th regiment of British infantry. She was during her youth an obedient and dutiful daughter, and during her more mature years a kind and affectionate wife, and her conduct while in this dreary abode of mortality shewed her to have been possessed of all that can render human life truly happy by Christian piety and genuine virtue.

Chief Justice Saunders had two sisters. They respectively married Colonel Elligood and Major McKay, half-pay officers residing on their estates in York County. His widow, who on his appointment in 1790 as a judge of the Supreme Court of New Brunswick, cast in her fortune with him, closed her life at Fredericton in 1845 at the age of 77 years, leaving a daughter, the wife of Hon. George Shore, and a son, Hon. John Simcoe Saunders.

NOTES.

(1). Ward Chipman, on the 24th of November, A. D. 1789, wrote Jonathan Sewell, Jr., at Quebec, as follows: "You have heard ere this of the death of Judge Putnam. This has made a vacancy which I think ought to be filled from the bar, especially as I have reason to believe the Attorney General would accept it, but he is upon such terms with the Government that it will not be offered to him, and a certain interest is so powerful that I hear it whispered Col. Beverly Robinson is to be the man, but the idea I confess does not operate pleasantly upon my mind. Unless the bench is learned in the law, the bar can never be." Col. Robinson was a member of His Majesty's Council, but not a member of the bar. Knowing that the possession of knowledge of law was not always regarded as an essential qualification for a Judge in an infant colony, if he was otherwise capable, it is not very surprising if Col.

Robinson aspired to be raised to the bench over the Attorney General, although the latter was a trained lawyer.

(2). Robert G. Wetmore, the second son of Timothy Wetmore, in 1795 married Sarah Gidding, of Queens County, and left for New York, where he took orders in the Protestant Episcopal church. On account of failing health he went North, and died in 1803, at the age of 29 years, leaving one son and one daughter. The son, A. K. S. Wetmore, was born at Rye, N. Y., June 6, A. D. 1802. In 1819 he came to this Province, and studied law in the office of his uncle, Thomas Wetmore. In 1823 he was admitted an attorney, and two years afterwards was admitted to the bar. In 1834, when the County of Carleton was organized, he was appointed clerk of the Peace and clerk of the Common Pleas. In 1824 he married Elizabeth, daughter of Charles J. Peters. They had three sons and five daughters. Mr. Wetmore died at Woodstock, August 5, 1862, at the age of 60 years. Mrs. Wetmore died in 1877, at the age of 78 years.

(3.) This Statute was enacted by the Province of New Brunswick, 10 and 11 Geo IV, Chapter 33, passed March 8th, 1830.

(4). In old Christ Church, Fredericton, and now in St. Ann's, may be seen the following:

A TRIBUTE

To the filial affection and distinguished fortitude of

MR. MICHAEL COOKE,

son of Rev. Samuel Cooke, D.D., Rector of Fredericton, who in his manly efforts and persevering struggle to preserve the life of his venerable parent in the moment of drowning, added to the public calamity by the loss of his own, in the full vigour of health, and 31st year of his age. In him perished an example as worthy of imitation in the various pursuits

and conduct of his life as in the virtuous sensibility and heroic piety with which it is closed. MDCCXCV. (1795).

The Rev. Dr. Cooke with his son was returning to his home opposite Fredericton. The night was dark and windy. A sudden squall upset the canoe and both were drowned.

(5). Married, at Fredericton, 8th of February, 1815, by the Rev, George J. Mountain, Rector, George Shore, Esq., Captain 104th Regiment, to Margaret, eldest daughter of Hon. John Saunders.

(6). It was not until the general election of 1846 that the first Roman Catholic was elected to a seat in the legislature of New Brunswick, when Joseph Reed of Gloucester, Martin Cranney of Northumberland, and Amand Landry of Westmorland, took their seats as members from constituencies where the French vote was a large factor. The first Roman Catholic holding a seat in the Legislative Council was James Davidson; of Northumberland County, in 1851, and the first one to hold a seat in the Executive Council was James McPhelim, who in 1856 was Post Master General.



WINSLOW HOUSE, PLYMOUTH, MASS.

CHAPTER VII.

HON. EDWARD WINSLOW.

Long before the Revolution the name of Winslow was prominent in the New England colonies.

Within a stone's throw of Plymouth Rock, to the westward, there is a large, square, wooden dwelling, with fluted Corinthian corners, and an air of old English solidity which at once marks it as a residence of some former leader of the colony. It has completed its third half-century of existence, and is commonly called the Winslow house, from the fact that it was built about 1754 by Edward Winslow, who was a great-grandson of Governor Winslow of the colony, and who purchased the land from Consider, a grandson of John Howland, who was one of the Mayflower's passengers.

Edward Winslow was a man of note, and held public offices of trust. In 1757 he was chosen one of the Board of Selectmen, and held that position until 1762. He was made treasurer of the colony in 1760, and, with his son, Edward Winslow, jr., the subject of this sketch, who was graduated from Harvard in 1765, held between them the offices of clerk of courts, registrar of probate, and collector of the port. Both father and son were ardent Royalists, and in the troublous times preceding the Revolution, warmly supported the Crown, braving public feeling, until the British army evacuated Boston, when they removed in 1776 to Halifax, Nova Scotia, where the father died, and was honored with a public funeral. The following in-

scription may be seen on the stone erected to his memory in St. Paul's churchyard in Halifax:

"Sacred to the memory

of

Edward Winslow, Esq.,

who died the 9 day of June, 1784

in the 72nd., year of his age."

As already stated Judge Winslow graduated at Harvard in 1765, of which college his father was also a graduate.

When Lord Percy led the expedition to the relief of Major Pitcairn at Lexington on that memorable day in April in 1775, young Winslow was his guide. In his youthful days Judge Winslow lived in the house already referred to, and from its open doors could gaze directly on Plymouth Rock, whence he doubtless drew the inspiration which made him prominent as one of the founders of the Old Colony Club, whence the Pilgrim Society sprang. He is also noted as being the first to deliver a public speech in commemoration of the Pilgrims, the occasion being at a meeting of the Old Colony Club, December 24th, 1770, the forefathers' day celebration.

One of his club-mates was Alexander Scammell, afterwards an Adjutant-General in the Continental Army during the Revolution, and from whom Fort Scammell, in Portland harbor, Maine, takes its name. He was wounded at the siege of Yorktown, where he commanded a light infantry corps, and died while a prisoner at Williamsburg, October, 1781. He wrote the first poetic tribute to the Pilgrims, "A Song," the opening stanzas of which are as follows:

(TUNE), "*The British Navy.*"

"All hail the day that ushers in,
The period of revolving time;
In which our sires of glorious fame,
Bravely through toils and dangers came—
Novanglia's wilds to civilize,
And wild disorder harmonize;
To plant Britannia's arts and arms,
Peace, plenty, freedom, pleasing charms."

The house was confiscated after the Winslows were compelled to leave. It eventually passed into the hands of Charles Jackson, the father of Mrs. Ralph Waldo Emerson, and of Dr. Charles T. Jackson, one of the discoverers of ether. The estate was sold in 1872 to Mrs. Lucia J. Briggs, wife of Rev. George W. Briggs of Cambridge, who now, or recently, occupied it as a summer residence, and enjoys many hours beneath the lofty lindens, planted by the fair hands of Edward Winslow's daughter. The frame of the old building is of oak, and is said on good authority to have been made in England, and brought to America ready to be erected. A large hallway runs from front to rear through the center of the house, and on either side are lofty square rooms. Upstairs in front the rooms are very high, with high wainscoting, deep recessed window seats, and queer old-fashioned mouldings around the ceilings. At the front the house is divided into two stories, while the rear contains three stories.

When the Revolution began Edward Winslow was Collector at Plymouth, but on the commencement of hostilities entered on military service. He took part in the battle of Lexington, and Lord Percy, who was in command, was pleased to say to him that his conduct on the day of battle did him great honor, and that the army was greatly indebted to him.

At the evacuation of Boston, 1776, he left with the army for Halifax, and proceeded thence to New York;

as the following order shows, he was appointed Muster Master General of the Provincial or "Loyalist" Troops.

HEAD QUARTERS, NEW YORK,

July 30th, 1776.

Edward Winslow, Jr., Esq., to be Muster Master General to the Provincial Troops, taken into His Majesty's pay, within the colonies lying in the Atlantic Ocean, from Nova Scotia to Florida inclusive.

STEPHEN KEMBLE,

Deputy Adjutant General.

On his appointment he wrote to London for a dress suitable for the office, to which he received the following reply:

I have made every enquiry of all the tailors at the Court end of the town, respecting a Muster Master General Uniform; they tell me there is no particular one. The War Office has been applied to, and the answer is the same." they may wear what they please." The Muster Master General here appears in a blue coat, scarlet cape, and a scarlet lining, with plain white buttons. I will send one by first opportunity such as worn on Muster day.

The headquarters of Edward Winslow were in New York till the close of the war, when he went to Halifax: here he remained two years as secretary to the commander in chief; first, Brigadier General Fox, and then Major General Campbell.

Gregory Townsend, of the Commissariat Department, Halifax, September, 1874, wrote Ward Chipman at Parr Town to the effect that General Fox, not coming out as Lieut.-Governor of New Brunswick, was a great disappointment to Winslow, though he endeavored to console him with the assurance that Sir Guy Carleton would influence his brother, Thomas Carleton, in his favor, and procure him the secretaryship of the province, the place he expected. He adds:

I hear that Mr. Odell is secretary, but our sanguine hopes have construed that into a private secretary. I shall be heartily mortified if he should be left unprovided for.

The fears of Gregory Townsend were realized; and the disappointment in consequence of Edward Winslow can best be told in his own words as follows:

The assurance to me of the Office of Provincial Secretary were from good authority: Col. Fox and Brook Watson (2) They in the most emphatic language said, that the arrangement was made, and that Sir Guy Carleton had acceded to it,—That I was certainly to be secretary of New Brunswick. Others of my friends in England congratulated me repeatedly on the appointment.

ROYAL ARMS.

When the evacuation of Boston took place in March, 1776, many of the Loyalists fully expected to return to their homes, never doubting but the rebellion would be suppressed. Two months after that event, James Putnam, attorney-general of Massachusetts, wrote from Halifax, "I am not discouraged; I shall remain on this continent as long as I can live here, or entertain any prospect of subduing the rebels. After that I must run away if I can. It cannot come to this, for they must, they shall be beat; they shall submit and own they have abused the mildest government and most gracious sovereign that ever existed." Before the departure of the Loyalists from Boston it was mutually agreed, upon, the condition that there should be no destruction of property on their part, they would be allowed to take with them whatever they chose. Among the governmental property was the Royal Coat of Arms, which had a place in the Council chamber in the old Town House, Boston. This was taken with the troops to New York, and at its evacuation in 1783 it was carried by Edward Winslow to Halifax. He wrote Ward Chipman January 16, 1785: "Give my old custom house seal to Mr. Leonard, and tell him I'll forward the famous carved Coat of Arms by the

first conveyance from Halifax." And again on March 25 of the same year he wrote to Ward Chipman:

By the Halifax Packet, Captain Fullerton, I send an assortment of stationery per invoice, which I hope will reach you in good order. In the box with your stationery is a Venerable Coat of Arms, which I authorize you to present to the Council Chamber, or any other noticeable public room, which you shall think best entitled to it. They (Lyon and Unicorn) were constant members of the Council at Boston—(by Mandamus—ran away when the others did, have suffered, are of course Refugees, and have a claim for residence at New Brunswick.

Cordially yours,

Edwinston

WARD CHIPMAN, ESQ.

The only suitable public room at that time was in a building on Germain Street, St. John, in which the Church of England service was held. In this building the sittings of the Supreme and other courts were held, also the meetings of the Common Council. As Ward Chipman was not only Solicitor General but also Recorder of the city, on every ground he would naturally choose this room as the most suitable place for the Royal Coat of Arms. On the opening of Trinity church, December 25, 1791, the vestry of which Ward Chipman was a member, "Resolved, that the old church be sold; price £200; that the organ, bell and King's Coat of Arms be removed from the old church to Trinity church" (3). The Royal Arms were accordingly placed over the governor's pew in Trinity church, where they remained till the great fire of June 20, 1877, when it was saved from the burning edifice, and subsequently at the opening of the new Trinity church, 1880, placed on its walls. The writer received

from a well known writer on North American history the following letter in relation to this subject:

BOSTON, December 9, 1876.

J. W. LAWRENCE, ESQ.

My Dear Sir,—I have read your letter reciting the evidence you have collected relating to the origin of the Royal Arms in Trinity Church, St. John, and I have not the shadow of a doubt that a little more than one hundred years ago, on the 17th of March, 1776, they left their home in the Council Chamber of their old Town Home, Boston, and sailed out of the harbor with their friends. Edward Winslow's letter to Ward Chipman, 1785, places the matter beyond any reasonable doubt. What place the Royal Arms occupied on the walls we cannot say, but they probably were between the portraits of King Charles II. and King James II., of more than full length and in splendid frames. Now that we have traced beyond a question the Royal Arms to their early home in the Council, it may be that other facts of their yet earlier history may be brought to light.

I am, Dear Sir, Yours very truly,

EDMUND T. SLAFTER.

Mr. Slafter, in 1889, published a work entitled "Royal Arms and other Royal Emblems and Memorials in use in the Colonies before the American Revolution." From this the following extracts are taken: "At what time the Royal Arms were set up in the Council Chamber in the Old State House in Boston cannot be accurately determined. They belong, as may be seen by the representation of them, to the House of Hanover, and might have been made as early as 1714, at the beginning of the reign of George I. The Arms of the House of Hanover were similar from 1714 to 1801, when a change was introduced by the omission of the French *fleur de lis*, and a consequent rearrangement of the insignia. In 1747 much of the interior of the Old State House was consumed by fire. The records, furniture, pictures of the kings, etc., in the Council Chamber were consumed. The Arms in question must

therefore have been placed in the Council Chamber, where Edward Winslow informs us "they were constant members of the Council in Boston" subsequently to 1749, when the repairs of the chambers were completed. In 1773, as appears from the bill of the painter, Mr. Thomas Craft, the King's Arms in the State House were painted and gilded at an expense of £10. They undoubtedly remained in the Council Chamber until the evacuation of Boston by the British army, when they were taken to Halifax, Nova Scotia, and subsequently found a permanent resting place in Trinity church, St. John, New Brunswick, where they are at the present time." A question naturally arises as to the age of the Royal Arms. Mr. Slafter says: "The Arms must have been placed in the Council Chamber after the repairs in 1749. The circumstances that much of the Old State House was burnt and the portraits of King Charles II and King James II consumed are not conclusive evidence that the Royal Arms were not in the Chamber at that time. As the portraits were more than full height, and in splendid frames they would be secured to the walls of the Chamber, while the Royal Arms were portable, being suspended as in "Old Trinity," eighty-six years by cords. In 1877 they passed through a greater peril by fire, when not only the church was totally destroyed, but the house to which they were removed for safety, passing through two burnings. That they are of an older date than 1749 seems probable from the letters of Edward Winslow; in one he calls them "the famous carved Coat of Arms," in the other "a venerable Coat of Arms." Such terms would never have been used if the Royal Arms had been placed in the Council Chamber within twenty-seven years before 1776, the year they left it. The Royal Arms possibly belong to the year 1714, when George I, the first of the House of Hanover, ascended the throne, as they are the Arms of that race of sovereigns (5).

After a residence of two years at Halifax, Edward Winslow, having been appointed to a seat in His Majesty's Council, removed to New Brunswick, where he resided till the close of his life at his country seat at Kingsclear, above Fredericton. He received the appointment of Surrogate General of the Province, the following being his deputies :

Bartholomew Crannell, ...	St. John.
Amos Botsford, ...	Westmoreland.
Benjamin Marston	Northumberland.
Harry Nase, ...	Kings.
Timothy Wetmore, ...	Queens.
William Hubbard, ...	Sunbury.
Joseph Garnett (6)	Charlotte.

At the formation of the Province an Inferior Court of Common Pleas was created for each county, with jurisdiction in certain civil and criminal cases where life and title to land were not in question. Mr. Winslow was appointed one of the judges of the court for York, and was also made one of the justices of the quorum for that county. The several functionaries entrusted with the administration of justice in and for that county were :

Justices of Inferior Court of Common Pleas.—Edward Winslow, Daniel Murray, George Dunbar.

Justices of the Quorum.—Edward Winslow, Daniel Murray, George Dunbar, George Lyman.

Justices.—Joseph Lee, Munson Hoyt, Isaac Atwood, William Garden, Daniel McGibbon, Edward Stelle, John Davidson.

Clerk and Commissioner for taking affidavits to be read in the Supreme Court.—Beverley Robinson, Junior.

Sheriff.—John Murray.

Coroners.—Garrett Clopper, Benjamin Altherten.

128 JUDGES OF NEW BRUNSWICK

Mr. Winslow also obtained a place in the first military staff organized in the Province, which comprised:

Harris W. Hailes, ...	Fort Major.
Edward Winslow, ...	Deputy Paymaster.
Rev. Samuel Cooke, D. D.	Chaplain.
John Califf, ...	Surgeon.
Daniel Brown, ...	Assistant Surgeon.
Samuel Hake, ...	Commissary of Stores.

In the engineering department Alexander Sutherland was commanding engineer, and James Glennie and John Rutherford engineers.

The fact that no lawyer settled in or near Fredericton at the inception of the Province seems to have caused considerable inconvenience. Mr. Winslow refers to it more than once in his letters to Mr. Chipman; and when it is remembered that the former, although of rare intelligence, had but little legal training, and that he was called upon to aid in dispensing justice at an age when its essence was largely clothed in form, and expected to be dispensed in a manner peculiarly methodical, it is not difficult to sympathize with him in his doubts and anxieties. The following have direct reference to the subject:

FREDERICTON, April 26, 1786.

Dear Chipman.—I am glad you are visibly employed, wish it was more lucrative. You must detach some professional man to this county, the inconvenience of being without advice is very great. Controversies will arise and there is not a man in the county, who can pretend to any knowledge of the form of proceedings. By the way, some papers are before me, which I will enclose, because it will save me the trouble of writing the whole story over again. The man was suspected, was taken, and it was evident he was not guilty, but some one certainly murdered the whole family and burned the house. Application had been made for the Administration and I proposed to grant it to Captain Townsend. I want Father Crannell to send a form of memorandum of what I am to do precisely. A Coroner's inquest sat on the bodies of the

deceased, and reported separately. Will the coroner and jury be entitled to fees on each? Judge Allen will be down to the Court. I will write again by him. Mrs. Winslow and little ones all are well and ask to be remembered in your prayers.

Adieu,

ED. WINSLOW.

WARD CHIPMAN, ESQ.

FREDERICTON, May 21st, 1786.

Dear Chipman.—I've this moment received yours without date, and thank you for this enclosure from Father Crannell. I feel anxious for an arrival from England. I want much to know who's who in this country. Don't defer your visit until the circuit to Sunbury. You cannot render a greater service than by attending our Inferior Court in June. I have serious thoughts of soliciting the Governor that a Crown lawyer should be requested to attend. There is literally not a man of Law in the County, and there is a variety of business to be performed. Several criminal cases, and two or three in Common Pleas of considerable importance. These proceedings ought to be carried on with decency and formality, some person acquainted with practice should set us right at first, and we will not err afterwards. In addition to these considerations I'll venture to affirm, that you will receive a portion of business, which eventually will pay you for your trouble. It will be a pleasant season to travel, and the task is not so arduous as you suppose. I hope you will attempt it. I have very much to say to you, and I cannot leave my home. While I am writing, a number of Frenchmen, who have been most unjustly ousted of their land, which was reserved by the government of Nova Scotia, have made application to me, and solicited proceedings against the trespassers, I have put them off, and have assured them, that some lawyer will be here in the second week in June. They say they have money, and are determined to try the matter. I have heard young Sewell is not well, will it not be of service to him to visit this quarter? The air is pure, he will have the benefit of exercise, he can ride, he can walk, I'll make him laugh in spite of his health. He will gratify me beyond what I would write to tell him. I am solitary, if he can reconcile himself to spend a few days out of your city, he will lay me under obligation, you certainly can spare him. I'll return him safe and sound, urge him to come up.

Yours forever,

WARD CHIPMAN, ESQ.

ED. WINSLOW.

The wishes of Mr. Winslow for a visit from Mr. Chipman and young Sewell were unexpectedly gratified in consequence of an event which occurred but shortly after the date of this last letter, the shooting of an Indian by Nelson and Harboard. The next letter from Mr. Winslow was 25th May, only four days later, detailing the circumstances and urging his immediate attendance, and also that of the Chief Justice to preside at the trial of the prisoners.

Under the Treaty of Amity and Commerce, 1794, between the British government and the United States, commissioners were appointed to determine what river was truly intended under the name of the St. Croix in the Treaty of Peace, 1783. Mr. Chipman received the appointment of agent for the British government, and Mr. Winslow that of secretary of the commission. The latter refers to this and other matters in the following, which, like almost all of his letters, is most racy and readable:

KINGSCLEAR, YORK, January, 14th, 1797.

My Dear Sewell,—Your letter my dear Sewell found me a cripple with the gout, in my right arm, which prevented me sooner acknowledging it. Chipman (I dare say) has wrote you on the subject of our new engagements, in the commission for locating the river St. Croix of the Treaty of 1783. You know the cordial friendship between us, and you will conclude tht the connection must render the duty perfectly pleasant. The office of Secretary is not what I originally aimed for. If I had been chosen umpire I should have acted under every possible restraint. For the duties of the office of Secretary, I feel myself every way equal, I fear no reflection, and will in no degree be responsible for the consequences which may attend the decision. It will be laborious, perhaps not lucrative. The advantage must result to both Chipman and myself, it has taken us from that dreamy path, which both of us have been imperceptibly sliding into obscurity and despair. During the first tussle here, we combatted difficulties with alacrity, and we submitted to inconveniences without murmuring. As soon as this was over, and the eagerness of

expectation had subsided, we saw the whole society gradually sinking into a sort of lethargy. Those who had salaries made their calculations to eat, drink and vegetate to the exact amount of their income. Those who had none, were saved all the trouble of estimates, for they could get nothing either to eat or drink. I belong (nearly) to the latter class. I found myself loaded with titles, overwhelmed with honors but little money. I was the proprietor of a tract of land, "beautiful for situation" upon a magnificent river and covered with prodigious pine timber. But the river glided by without material advantage to me, for I could not buy a boat, and the trees might have stood to eternity for I had hardly credit for an axe. I have dashed at every opening, but a wife, ten children and the gout have held me fast. Chipman was not quite so bad off, he had saved a little cash, so that he did not feel the weight so soon. But when it fairly rested on his shoulders down he dropped, and it would have grieved the heart of a man's sensibility to have watched his countenance for the last two or three years. The late appointment has revived, nay, has regenerated him. It may not be of long continuance, and in a pecuniary view possibly will not be very beneficial, but it is an honorable mark of confidence, and it has brought him into a field where he may exercise his talents. The vigor of his mind is unabated and he is industrious almost beyond example. I presume he will secure so much credit to himself by his correct management of this important business, that it will lead to something which may render the remainder of his days comfortable. For myself I cannot anticipate any substantial benefits from the employment, and yet I am highly gratified at it. I am almost ready to exclaim like General Ruggles' Indian, when his friends were preparing the last offices for him, "My dear Brothers, you shant bury me yet."

The General Assembly met this day. I am sickened at the anticipation of the renewal of our controversies led by Glennie (7), analyzing all the principles of government, fixing the political longitudes and latitudes, and establishing the boundary lines between prerogative and privilege. Our very worthy rector, Mr. Pidgeon (late 65th Regiment) often speaks of you. He is to be married early in the spring to a daughter of Bishop Inglis. I assure you, my dear Sewell, I did not intend to write so long a letter. Well, you brought yourself into the scrape, and I shall write you whenever I please.

I am yours,

JONATHAN SEWELL, ESQ.,

ED. WINSLOW.

Attorney-General, Quebec.

In the fall of 1802, Governor Carleton confidentially told Mr. Winslow that he contemplated visiting England the following year. Mr. Winslow then asked His Excellency if he had any preparation for such an event. He said: "Sir, you have been the governor of the Province ever since its creation. When you visit the King and his ministers are you competent to answer such questions as they will ask respecting the state of it? Have you any idea of the present population? Have you any chronological record of the great political events? Do you recollect all the motives and arguments which operated on your mind to induce you to fix the seat of government at Fredericton? Can you recollect the military reasons of establishing the headquarters there?" At the request of His Excellency Mr. Winslow prepared a comprehensive paper on the state of the Province. The earnestness with which he entered on the work can best be told in his own words to Ward Chipman: "I have a very elegant book into which I mean to enter my remarks, and which I do not mean to present to the governor until it is complete. For the state of population I have written to my own deputies (surrogates) and several others in every county to make estimates for me. I have also written to the most judicious of them requesting that they will give me information on other subjects and to favor me with local descriptions. I wish you would revolve the subject in your mind, and that you will sketch such a state of facts respecting the operations of the first general assembly and such observations as you may think proper to make relative to the conduct of the subsequent general assemblies, and when we get together we will digest the whole business. I mean to rout and to make some pretty deep impressions, but I shall be tractable, docile, and open to advice, especially from you. I have also to request your opinion whether I may take the liberty

of writing a civic word to Mayor Campbell respecting the trade of St. John, and whether Charles Peters will be a proper person to employ to give me a state of the population. The people I have written to are Amos Botsford and Sheriff Millidge, Westmoreland. Jonathan Odell has written Col. Mackay of Charlotte, and I have written David Oliver respecting the Islands. At Northumberland I have engaged Sheriff Reed, Mr. Lee and Mr. Taylor; Queens County, Judge Peters; Kings, Henry Nase, with a request to Coffin and Leonard. At Sunbury, Hubbard is employed, so that I stand a chance of procuring authentic information. You know that in all matters of this nature I am indefatigable, and that on such an occasion I shall take more pains than any other man would. You also know how important your advice will be to me, and that without your correcting hand my performance must be imperfect; public considerations will therefore induce you to afford me your best assistance. It is impossible for me to give you a full view of my design, my wishes and expectations in any way, but a personal interview, I think, I shall be able to convince you that some important objects may be effected by the faithful execution of this duty. As to the labour attending it I care nothing about it. Sickness has not abated the vigour of my mind nor have disappointments produced despondency. As soon as I am able to work my fingers I'll commence my operations."

In the autumn of 1803, Governor Carleton and family, with Edward Winslow, took passage in the mast ship "America" for England, the first visit of the latter and the first of the governor since his assumption of office in New Brunswick in the autumn of 1784. After his arrival the Hon. George Leonard wrote Mr. Winslow, January, 1804: "I have recommended Lord Sheffield to you for information on the subject of trade to the West India Islands from the colonies, and ability to supply the Islands with lumber and fish.

You will leave your address at his house, Privy Gardens, he will then call on you." The work in which Mr. Winslow engaged in gathering statistics and general information regarding New Brunswick was soon to bear fruit. Lord Sheffield held high official position and became very popular in New Brunswick by reason of his policy respecting the colonies. At a court of the mayor, aldermen and assistant aldermen of the City of St. John, in Common Council, assembled at the City Hall of the city, March 15, 1805, it was "Resolved, that the thanks of this corporation be given to the Right Honorable Lord Sheffield (8) for his Lordship's exertions by his late and former publications, in support of the British navigation laws, on which the prosperity of the empire at large, and more particularly of this and His Majesty's other North American provinces so greatly depends.

"Resolved, that the freedom of the city be humbly presented to his Lordship in a box to be made of the wood of this country, and that a picture from an engraved likeness of his Lordship presented to this board by the Honorable George Leonard, be enclosed in a suitable frame and hung up in the City Hall in grateful remembrance of his public service.

"Resolved, that the Recorder of this city be requested to transmit the foregoing resolutions to his Lordship, requesting his acceptance of the gratitude of this Court."

JUDGE OF THE SUPREME COURT.

The second vacancy on the Bench of the Supreme Court was in 1806, consequent on the death of Judge Allen. The President and Commander-in-Chief recommended William Botsford, Judge of the Court of Vice-Admiralty, as neither Attorney General Bliss nor Solicitor General Chipman would accept the office with a salary of three hundred pounds sterling. To the

surprise of Bench and Bar, the British government appointed Mr. Winslow. The surprise was because he was not a member of the Bar. The members of the Bar at this time besides Jonathan Bliss and Ward Chipman were Amos Botsford, S. Denny Street, Thomas Wetmore, John Murray Bliss, William Botsford, Charles J. Peters, George Leonard and William F. Odell. Although Edward Winslow was not at the Bar, for twenty-five years he was a member of His Majesty's Council, and senior judge of the Inferior Court of Common Pleas for York County, and had passed his sixtieth year. Judge Winslow recognized in the Earl of Sheffield the true power behind the throne to be credited with the elevation of the former to his new position, and lost no time in expressing his gratitude in a letter in which his rare powers of composition are employed at their best in the expression of his very evident and very deep and earnest gratitude. The following is the letter:

KINGSCLEAR, New Brunswick,

20th August, 1807.

My Lord,—It was not until the 29th of June last, that I received His Majesty's mandamus for appointing me a Judge of the Supreme Court in this Province. The official forms are now arranged and I have taken my seat. But before I enter upon the duties of my office it is incumbent upon me to perform one solemn duty of another nature which is to offer to your Lordship the united acknowledgments of a numerous and grateful family; a family raised from despondency by your Lordship's benevolent interference, for although I am fully sensible of the condescension and goodness of my other noble patrons and friends, the important offices of your Lordship's active exertions in my behalf. My worthy and faithful friend Lutwyche has communicated the particulars of the negotiations which have been carried on in my favor, and truly, my Lord, the perusal of this has excited a degree of sensibility beyond what I have ever before experienced. Were all noblemen like Lord Sheffield, either would be honorable indeed, but I forbear dwelling any longer on this affecting sub-

ject than barely to satisfy your Lordship, that your noble, generous and disinterested conduct towards me has produced suitable reflections in my mind and impressed me with the most powerful sentiments of admiration and gratitude. While some of the gentlemen of the Bar are not perfectly satisfied with my appointment, from every other order of men I have received the most explicit congratulations. These gentlemen affect a kind of *esprit de corps*, and their objection arises from not being a barrister. The Solicitor General (Mr. Chipman) wrote me in the most pointed terms while I was in England that in case of a vacancy on the Bench he would not wish to succeed to it, and I communicated his letter to Governor Carleton then at Bath, before I had any idea of applying for the office myself. I wish your Lordship would complete your goodness to the Province by interesting yourself to send us out some active respectable man for a Governor. Fifteen hundred pounds sterling a year for four years past, with considerable emoluments, has been divided between a Governor who for his amusement resides at Ramsgate in England, and a President who for his convenience lives eighty miles from the seat of government.

Your Lordship's picture is the strongest likeness I ever saw—it has been viewed with peculiar pleasure by all orders of the people here and with emotions of the highest gratitude and respect by

Your Lordship's most faithful

And devoted servant,

ED. WINSLOW.

TO EARL SHEFFIELD.

In 1806 a full size portrait of his Lordship was received from England, and placed behind the speaker's chair, where it remained till 1820, when a Coat of Arms for the House of Assembly was purchased. On its arrival it was substituted for the portrait and the latter was removed to Government House by order of Governor Smythe. This disposition of the picture was, however, so little satisfactory to the House of Assembly that the following resolution was adopted by that body on the 31st January, 1821:

"Ordered, That the portrait of Lord Sheffield, which has been removed from its former place over the

speaker's chair be forthwith returned to the same." On the return of the portrait to the Province Hall it was placed in the speaker's room, the Royal Arms remaining over the speaker's chair.

The first newspaper published in Fredericton was issued Saturday, August 9, 1806. Its title and motto were as follows:

THE FREDERICTON TELEGRAPH.

We strive to paint the manners and the mind.

The following extracts are made from its editorial and advertising columns:

TO THE PUBLIC.

On venturous wings in search of praise I go
And leave the gazing multitude below.

The Editor tenders his grateful acknowledgements to the patrons of the Telegraph, and assures them that nothing shall be wanting on his part to render it useful and interesting to its readers; in order, therefore, that he may not fail in his laudable intention he humbly solicits assistance from those amateurs of taste who might devote some of their leisure hours to the decorations of its columns, and the instruction of its readers, that by enriching its pages it may not only prove a fertile source for amusement, but in the end may not be ashamed of its origin, nor yet be denied a place on the list of papers which *shine* in British America. Aware, however, of the advantages which may result to society from a well-conducted periodical paper, he has determined to devote his whole talents to the promotion of its utility and the task of rendering it, in time, not unworthy the public approbation. The talents of poets, orators and historians have employed to celebrate and record the actions of those who have moved in a distinguished sphere, while perhaps the biography of such characters as have shone in the humbler career of private life might be attended with more advantage to the generality of readers. Hence the lives of persons who have shed lustre on the human character, by the practice of every social virtue would prove a useful and not uninteresting part of the Telegraph, and every communication of this tendency will be cordially received and inserted. Many persons are disposed to

improve their minds, but not having a judicious instructor to point out those works which might be perused with advantage, they read promiscuously whatever comes in their way, and thus rather collect a quantity of indigestible matter than enlarge their mind with useful knowledge. The editor, however, will be careful in selecting those things which are best adapted to promote general improvement and prove effectual in aiding the growing taste of this community. The *Telegraph* will be issued every Saturday. The price, eleven shillings and three pence, payable at the end of every month—prompt payments only necessary to make this establishment permanent; and as the Editor is young in life, as well as in business, and therefore not possessed of the friends and advantages which other papers in the Province possess, he confidently hopes his friends will comply with this request. It is expected all postage will be paid by the writers.

MICHAEL RYAN,
Editor and Proprietor.

The following advertisements may be read with interest:

PETER FRASER

Has just received a general assortment of Spring goods suitable for the season, all of which are of the best quality, and will be sold on the lowest terms for cash.

EZEKIEL STOOT.

Takes this method of informing the ladies and gentlemen of Fredericton and the County of York that he has just received an elegant assortment of Leather, Calf Skins, Boot Legs and Vamps, Long and Short Cordocan and Hessians, with tops and morocco trimmings. *English Soles, Black and Yellow Morocco Skins*, suitable for ladies and gentlemen's slippers. He earnestly requests those gentlemen who have so liberally employed and have not settled for the same up to the 14th December last to make immediate payment that he may be enabled to answer the demands made against him; otherwise he shall without discrimination file their accounts into the hands of an Attorney to collect.

EZEKIEL STOOT.

Fredericton, August 6, 1806.

FOR SALE.

That well known WIND MILL adjacent to Fredericton, belonging to Mrs. Brannah. For terms apply to J. H. Lamb.

ARRIVALS.

Last evening came up from St. John the sloop MARIA, Captain Price, and INDUSTRY, Captain Segee. By them we have received our regular file of St. John and Halifax papers.

The *Telegraph*, not proving a financial success, was early discontinued, and its proprietor joined his father, John Ryan, at Newfoundland, and issued the first newspaper in that colony. From 1799 to 1806 John Ryan was King's printer and published *The Royal Gazette*, at St. John, New Brunswick. His son Michael was the first to learn the trade of printer in New Brunswick. In 1809, Michael Ryan was in the West Indies, and published the Barbadoes *Globe* in 1828, he visited his parents at Newfoundland, and on his return in a ten gun brig to Barbadoes via Halifax, the vessel after leaving the latter port was never heard from.

The death of Hon. Gabriel G. Ludlow, in 1808, President and Commander-in-Chief, left Judge Winslow senior member of council, and as such he assumed the government of the Province. While filling this position he writes to the home office as follows:

FREDERICTON, N. B., March 12, 1808.

My Lord,—I have the honor to enclose, for your Lordship's information, a list of His Majesty's Council, of this Province. Your Lordship will perceive that there are at present two vacancies in the Council, one by the death of Judge Allen, and the other by the death of President Ludlow. I therefore deem it my duty to recommend George Sproutie, the Surveyor-General of the Province, and the one whom I am warranted to say, would now be recommended, by Lieutenant-Governor Carleton, if His Excellency were present, and who in the opinion of every member of the Council, whom I have had the opportunity to consult, is in all respects the fittest

person that could be nominated, to fill one of the present vacancies. For the second nomination I beg leave to refer your Lordship to the Lieut.-Governor, now in England, to whom I should in the first instance, have referred the whole subject, but that I thought it necessary, in a case of present urgency, to guard against any possible accident, by which an appointment immediately required for His Majesty's service in this Province might have been unavoidably delayed.

I have the Honor to be, etc.,

EDWARD WINSLOW.

Right Hon. Lord Castlereagh

The two vacancies were filled, by the appointment of George Sproule and Harris W. Hailes. The following commission was granted, during the administration of Judge Winslow, to Jacob S. Mott, as King's printer, by the Hon. Edward Winslow, President of His Majesty's Council, and Commander-in-Chief of New Brunswick."

Edward Winslow, to Jacob S. Mott, Printer,—

Reposing special trust and confidence in your loyalty, integrity, and ability, I do by these presents, constitute, and appoint you to be King's Printer, within the Province of New Brunswick, for printing all books, Proclamations, and other Acts of Government, the printing whereof appertains to the Office of King's Printer, within the said Province, To have, hold, execute, and enjoy the said office during pleasure, with all the profits, perquisites, advantages, and emoluments there-to belonging.

Given under my hand and seal, at Frederickton, the fifth day of March, in the year of our Lord, one thousand, eight hundred and eight, and in the forty-eighth year of His Majesty's reign, by the President's Commands.

JON. ODELL

The following letters from Judge Winslow to his son Edward afford interesting information, upon Provincial matters and evidence of the admirable judgment exercised by the former, in his conduct of public affairs.

KINGSCLEAR, York, 26th April, 1808.

My Dear Son,—By the death of President Ludlow, I succeed as senior member of the Council, to the office of President, and Commander-in-Chief of the Province. Although that situation continued but for a single quarter, it afforded me an opportunity of effecting some objects of considerable importance.

My predecessor, under the expectation of hostilities with the Americans, had called out 1,000 of the militia, and had officered them, formed them into battalions, under the command of Col. Saunders and Col. Wetmore. A detachment was stationed at Fredericton, and another at St. John, and a third at St. Andrews, under Col. Mackay.

They were crammed into barracks, drilled and disciplined in the true style of soldiers. At Frederickton, your old theatre was converted into a famous barracks. Thus arranged I found them all. The country was of course deprived of a large number of its yeomary, who had hitherto been engaged in the pursuit of agriculture, and who, when they were all employed, could not raise a sufficiency of bread for their families. As spring approached misery and want seemed to stare them in the face. Never for a moment believing that the Americans had a design to invade this country, I thought it my duty to disband them, and on the 24th inst. (April), they were all sent huzzahing and shouting to their homes. The gentlemen who have been employed as officers are disappointed by this measure. But I've the satisfaction to find that amongst the judicious and disinterested parts of the community it is highly applauded, and I have no doubt but that it will meet the approval of His Majesty's Ministers.

General Hunter is expected in a fortnight to take the command of the Province, Civil and Military, to which he was appointed previous to the death of Col. Ludlow. I shall then return to the Bench, and if the salary is augmented to five hundred pounds, as we are informed, I shall be able to procure the necessaries of life for my numerous family, but beyond that my ambition does not soar just at this time.

Capt. John Allen has gained much credit, and he lays down his regiment with much regret. The calling out of the militia had, as you may suppose, a fatal effect upon the lumber contracts. All those fine lads, who were hitherto employed in Mr. Miller's service, were among the embodied militia, and

I believe Miller does not send a single raft to St. John, this Spring. The whole fencible force is here, and the 101st at St. John.

Your affectionate Father,

EDWARD WINSLOW.

EDWARD WINSLOW, JR.

KINGSCLEAR, York, Aug. 3rd, 1809.

MY DEAR SON,—

While there remains any appearance of misunderstanding between Great Britain and the United States, it may be very political, to place these colonies under the command of Militia Officers of respectable rank and character.

Ours is an unexceptionally able Military Officer, but he is wonderfully out of his element in a Chancery Court, or Land office. When you left me, I was under some apprehension, that exception would be taken to my holding the office of Surveyor of the Woods, (14) for this Province, under a stiff opinion, the Judges should hold no other employment. As that office was held by me independent of the Government of New Brunswick, I did not readily or tamely assent to its relinquishment. The matter is now settled in my favor. My situation on the Bench is rendered much more comfortable, and eligible, by the introduction of Mr. Bliss, and Mr. Chipman.

The former has purchased Mr. Lyman's house, and will take up his residence in Fredericton, and, I dare say, will make a pleasant addition to our society.

After the death of Chief Justice Ludlow, his venerable, and truly amiable widow in a manner, which excited sensations that can never be described, transferred to me, the Chief Justice's elegant silk robes, bands, etc., and asked me to wear them for her husband's sake.

Your affectionate father,

ED. WINSLOW.

EDWARD WINSLOW, JR.

KINGSCLEAR, YORK, 25 November, 1811.

MY DEAR SON,—

At present I am free from that tormenting complaint, the gout, and am surrounded by my five cheerful daughters in my comfortable habitation at Kingsclear. My duties on the

Bench are performed with as much punctuality as my health will allow. In August, Major General Hunter, President, was ordered on military service to Halifax, and in September Major General Balfour (15) was ordered by the Military General at Halifax to proceed to New Brunswick and take command. Accordingly, Mr. Balfour was sworn in as President. In October, Major General Hunter was ordered back to New Brunswick, but specially commanded to take his station at St. John, so that his Honour the President now resides eighty miles from the seat of government, His Majesty's Council of Court are not very frequently consulted. I wrote you some time ago, and suggested the indispensable necessity of procuring some kind of carriage to convey me from my house to town, my limbs, and particularly my knees, are so crippled that I cannot mount a horse, or ride without excruciating pain, and if the weather is wet I am very often prevented from attending my duty at the Supreme Court for two or three days together, a circumstance which, considering the liberal salaries we receive, is the source of great concern to me.

Your affectionate Father,

ED. WINSLOW.

ED. WINSLOW, JR.

In that day travelling in the Province was beset with many difficulties. In the Royal Gazette of March 31, 1815, the following appears: "Ensign Hatheway of the New Brunswick Fencibles, arrived yesterday at Fredericton, by express in six days from Quebec with despatches from His Excellency, Sir George Provost to Sir John Sherlock at Halifax, for the purpose of procuring a frigate to be sent from Halifax to St. John, at which place Sir George Provost would meet it and embark for England." Sir George arrived at St. John over land from Quebec on the 14th of April, and stopped at the residence of John Robinson, Esquire, speaker of the House of Assembly. His Majesty's ship of war "Cossack," Hon. Capt. Rodney, arrived from Halifax, where Sir George Provost embarked in her for England.

The following letter from one of the daughters to her absent brother gives an interesting but necessarily sad account of the closing scenes of a life very largely devoted to the interests of the Province by one possessing many admirable and exceedingly attractive qualities.

Judge Winslow died in 1815, as appears from the following letter:—

KINGSCLEAR, May 18th, 1815.

MY DEAREST BROTHER,—

How shall I tell you of what I know will almost distract you, but you must know it. Oh, Edward! our dear father has gone, taken almost in a moment from us poor children. I know not how we have supported this dreadful stroke, but it is the will of God. My heart aches for you.

My dear father has been very unwell all the spring, but as he was always worse at this season, we were not alarmed. We flattered ourselves when the fine weather came on, so that he could get out, he would be better.

Tuesday evening he sat up better than usual, talked of old times, and really seemed to enjoy himself. Wednesday evening he complained of a pain in his head, but still seemed better than he has been for months; but about twelve o'clock, as I was standing by the entry talking to Wentworth, Aunt Sally came out of the parlor and said, your father seems quite faint. I ran to him. . . . it was a dreadful fit. We got him to bed and the doctors came very shortly. After consulting, they concluded to bleed him in the head. After this was done, he recovered his speech, and begged us not to be distressed. He had a quiet night, and the next day all three of the doctors that attended him gave us every reason to hope he would recover. On Friday morning he evidently became much worse, and continued so all day. About twelve o'clock he looked at us, and with difficulty said, "my poor children." Every effort he made to speak after that was in vain. He lived till Sunday at four o'clock, sensible to the last moment. My brother, how light does every affliction we have had appear when compared to this.

Your affectionate sister,

HANNAH WINSLOW.

EDWARD WINSLOW, JR.

A copy of the obituary notice reads thus:—

Died on the 13th May, 1815, of apoplexy, under which he languished a very short time, the Honourable Edward Winslow, a member of His Majesty's Council, and one of the Justices of the Supreme Court for the Province, in his 70th year.

The order of procession at the funeral of the late Honorable Edward Winslow was: The Clerk and Sexton, the High Sheriff and coroner, the preceptor and students in the college, the physicians, the clergy, the pall bearers, Frederick Robinson, Peter Frazer, Gen. Armstrong, William F. Odell, Archibald McLean and Major Rickwood, the family, Chief Justice Bliss, Hon. Jonathan Odell, the President and suite, members of the Council, Judges and gentlemen of the Bar, officers of Artillery, gentlemen of the town and the military. The procession was formed at the Province hall, whither the body had been conveyed and laid in state, and where a guard of a company of the New Brunswick Fencible Regiment attended for the occasion.

Judge Winslow had three sons who grew to manhood. Murray in 1814 was a lieutenant on the Canadian lakes in the war with the United States, and was killed in action on board Capt. Barclay's ship. Edward was in the East India Company service, and on retiring in 1818 held the office of purser on the Cumberland. In 1819 he returned to New Brunswick and entered on a commercial life at St. John. In 1820 he went to England on business, and returning was wrecked and lost his life on the coast of Nova Scotia. His portrait was taken in 1812 at Calcutta, and is in the possession of a nephew. The following letter has reference to the wreck in which Mr. Winslow lost his life:

BARRINGTON, N. S., May 19th, 1820.

GENTLEMEN,—

I am sorry to inform you for the information of those who may be interested, that the brig "William and Matthew,"

Capt. Exems, from London, was wrecked on the night of the 12th inst. on Cape Negro, and what adds to the misfortune is that Edward Winslow, Esq., the principal owner, in his anxiety to reach the shore, was drowned with one of the seamen. The vessel is now entirely in chips, and from the violence of the easterly wind and the nature of the place, very little has been saved. The body of Mr. Winslow has not yet been found, but I have offered a liberal reward for it; and if I succeed, I shall carry it to Shelburne, and inter him with the respect due to his character and connexions. Whatever belongs to him shall be taken care of and transmitted to St. John. Excuse the hurry of this, which I send off express to Yarmouth. I am, Gentlemen, yours,

WM. ROBERTSON.

The last surviving son of Judge Winslow was J. F. Wentworth, in early life an officer in his Majesty's 41st Regiment. He retired on half pay, and on September 25th, 1823, he married at Kingsclear, York County, Jane Caroline, youngest daughter of the late Andrew Rainsford, at one time Receiver General of New Brunswick.

The following correspondence came to the editor after the rest of the foregoing chapter had been in print. It is of considerable interest.

FREDERICTON, 15th Feb'y, 1788.

DEAR SIR,—

The two enclosed letters came from Canada, and addressed to my care, and I am gratified that a good opportunity offers to forward them immediately.

I am the person whom you once knew as a very frequent visitor in Col. Vassall's family at Cambridge. My sister Penny (whom you must also recollect) joins me in compliments to you. We both live at this place, where we shall at any time be very happy to see you.

If at any time I can render you a service, it will give me pleasure.

Being with friendship and esteem,

Your very humble servt,

ED. WINSLOW.

MR. OTHO ROBICHAUX.

FREDERICTON (1790 or 1791).

DEAR OTHO,—

I've a relation and friend here who has engaged very zealously in the settlement of this country, and I am anxious that he should have a seat in the General Assembly.

With difficulty I have prevailed on him to say "That he will serve if he is elected." A writ has this moment issued for your county, and as I presume that no gentleman among you will wish to be at the expence of serving, I shall take the liberty of recommending Major Harris William Hailes. I know that you have influence among the French settlers, and I flatter myself that it would give you pleasure to exert it in favor of a friend of mine, but this I do not wish, unless it accords with your own private judgment. Major Hailes lives at the seat of Government, is a gentleman by family and education, and will serve you faithfully. This I am sure of, and but for this conviction I would not have mentioned his name. I've wrote Nicolson on the subject.

When I was in Quebec I had the pleasure of seeing your sisters.

Whenever you have any letters for them, I will forward them carefully.

I am, with much esteem,
Your friend, etc.,

ED. WINSLOW.

MONSIEUR

OTHO ROBICHEAUX.

FREDERICTON, 24th June, 1792.

DEAR ROBICHEAU,—

I take the liberty to ask a favor of you. I am in want of feathers for a Bed, and Captain Lyman acquaints me that you can supply me.

If it falls in your way to procure for me about sixty pounds of very good wild fowl feathers, it will much oblige me, and I will cheerfully pay the expense to your order.

I hope you have recovered your health, and that you will long continue to enjoy it.

I am,

With much friendship,
I remain yours,

ED. WINSLOW.

MONS'R. ROBICHEAU.

FREDERICTON, March 14th (year lost).

MY DEAR ROBICHEAU,—

Mr. McLeod, from your district of country, gives me an opportunity of writing you a few lines to express how much I am gratified at hearing of your welfare, and to assure you that altho a long time has elapsed since I have had any particular communication with you, I still feel a very sincere affection and esteem for you, and desire that you will have the goodness to tell your wife and family that they have a friend in this place who would be gratified at any opportunity of rendering them any service.

During the last winter I have experienced a constant succession of sickness and pain, which has reduced me to a state of weakness and imbecility, in so much that I am compelled to get my daughter to write this letter for me. I shall always be glad to hear of you, accept my sincere assurances of friendship and kindness, and believe me to be with unabated esteem,

Your friend,

ED. WINSLOW (16).

NOTES.

(1). The "Winslow Papers," A. D. 1776-1826, published in 1901 under the auspices of the New Brunswick Historical Society and edited by the Rev. W. O. Raymond, M. A., LL. D., is a valuable historical compilation, and discloses the condition of New Brunswick during the period indicated.

(2). Brook Watson at the evacuation of Boston was a merchant of that place, and through the war was in the Commissariat department. At its close he went to London and became an alderman of that city and a member of Parliament. The legislature of New Brunswick in 1786 appointed him agent for the Province, which office he held till 1794. At the session of the legislature of the last named year it was "Resolved, This House taking into consideration the necessity of having an agent residing in England, and His Majesty's services having required the attendance of Brook Watson, agent of this Province with His Majesty's forces on the Continent. Resolved, That the thanks

of this House be communicated to Brook Watson, Esquire late agent of this Province, for his services." Brook's Ward, on the west side of the harbor, St. John, N. B., is named after him.

(3). The following were the officers of Trinity church: Rector, Reverend Mather Byles, D. D. Church Wardens: Thomas Horsfield, Fitch Rogers. Vestrymen: Gabriel G. Ludlow, Ward Chipman, Munson Jarvis, Thomas Mattock, Nathan Smith, Thomas Elmes, William Hazen, Colin Campbell, Nehemiah Rogers, Isaac Lawton, Thomas Bean, Samuel Hallett. Vestry Clerk: Colin Campbell.

When the church was in flames during the great fire of 1877, the late Francis B. Hazen, son of the late Hon. Robert L. Hazen, removed the Royal Arms to a place of safety. On the erection of the present stately edifice, they were placed over the west door, surmounting a bust of Queen Victoria, placed in the church on the year of Her Majesty's jubilee, 1887.

(4). The Rev. Edward F. Slafter married a daughter of Charles Hazen, Esq., a son of the Hon. William Hazen, of Portland, St. John, N. B.

(5). Christ Church, Boston, of which Rev. Dr. Byles, of Trinity church, St. John, N. B., was rector at the evacuation, was presented in 1833 with two flagons, a paton and a plate, called a receiver, on which were engraved the Royal Arms, with the inscription: "The Gift of His Majesty, George II, to Christ Church, Boston.

(6). Joseph Garvice was a Massachusetts Loyalist, and he settled at At. Andrews, N. B. At the opening of the Supreme Court in 1785 he was admitted a barrister. He was the first clerk of the Inferior Court of Common Pleas, and Judge of Probate for Charlotte County, also master extraordinary of the Court of Chancery. In 1790 Mr. Garvice was in England, pressing his claims for service in the war, as shown by a letter of Ward Chipman: "This will be handed you

by Mr. Garvice, a gentleman of St. Andrews, formerly an officer in the British American forces, who goes home to solicit half pay, which by the neglect of his friends has not been secured to him. His merit, sufferings and services are such as to justly entitle him to the most favorable notice of government, and I shall esteem it a peculiar favor if you will have the goodness to introduce him to Mr. Watson, as such will save my troubling him with a letter on the subject, which I should otherwise feel myself bound to intrude upon him. There is Captain Clinch, whose paper Mr. Garvice takes with an application to the treasury. The recommendation which Governor Carleton has given Mr. Clinch's case and character render it unnecessary for me to say anything to entitle him to Mr. Watson's patronage in promoting the cause of the applications." In 1801 Mr. Garvice died. He was the only member at the time of the legal profession in Charlotte County.

(7). James Glennie represented Sunbury County in the four first Parliaments. In 1789 he was chosen in place of Captain Vandenburg, who returned to the United States. Mr. Glennie fought a duel with John Coffin, one of the members for Kings County, and was wounded. A neighbor said to Mrs. Glennie, "It was a pity they fought." She replied, "If Glennie had not fought Coffin she would." Captain Glennie had a contract with the British government to supply masts for the navy. This involved him in financial difficulties, and was followed by loss of his property and departure from the Province. He went to Canada and received an appointment as major of engineers. From there he went to England and published a work on the inutility of some of the fortifications being constructed in Canada, followed by his quitting the service. In 1807 the Earl of Chatham, Master General of Ordnance, appointed him inspecting engineer in the West Indies. Captain Glennie was a favorite of the

Duke of Kent, receiving substantial acts of kindness from him. He had two sons, one in the army, the other in orders in the Church of England. He was a native of Aberdeen, and died in London 1817, aged 67 years. Mrs. Glennie never left the Province. The chief creditor of her husband, a Mr. Blair, a merchant of London, gave her one of the farms. This with an annuity enabled her to live comfortably. She died at Sunbury, 1838, at an advanced age.

(8). Earl Sheffield was three times married; the third consort being Lady North, daughter of the second Earl Guilford. His Lordship died 1831, aged 86 years, at his seat, Sheffield Park, Sussex, England, having one son and one daughter. Shortly after Sir William Colebrook assumed the governorship in 1841, at his request, the portrait of Earl Sheffield was sent to Government House, where it was nearly ruined by his boys, who used it as a target for their arrows. After Sir William left the Province, the late Hon. Robert L. Hazen, on learning of its condition, had it sent to Boston and repaired. On its return it was hung on the walls of the Legislative Council Chamber, where it remained till the building was destroyed by fire in 1880. The portrait fortunately was saved, and upon the erection of the present stately Legislative building, it was placed on the walls of the Chamber of the House of Assembly, where it now remains. Besides the portrait of Lord Sheffield now on the walls of that Chamber, are portraits of George III and Queen Charlote, Lord Glenelg, over the Coat of Arms, above the Speaker's Chair, and of the following Lieutenant Governors since Confederation, Hon. L. A. Wilmot, Hon. Sir Leonard Tilley, Hon. Robert D. Wilmot and the Hon. John J. Fraser. In the speakers' room is a large photograph of Lieutenant-Governor Hon. John Boyd. Steps should be taken to have it produced in oil and hung on the walls of the Legislative Chamber.

(9). Compulsory prepayment of postage did not obtain in New Brunswick until about the time of Confederation. If not paid by the sender the person to whom addressed was compelled to pay. Mr. Ryan apparently not only expected his correspondents to write gratuitously, but in addition to pay the postage on the lucubrations. He may have thought this course would keep the correspondence within moderate compass.

(10.) Mr. Sproule, who was a New York Loyalist, held the office of Surveyor General from the organization of the Province.

(11). The first King's Printer of New Brunswick was Christopher Sower. He died in 1799, and was succeeded by John Ryan, who on his removal in 1808 to Newfoundland, was succeeded by Jacob S. Mott. On the death of Mr. Mott in 1814, George K. Lugin was appointed. He removed to Fredericton, and issued the first number of the Royal Gazette March 10, 1815.

(12). The detachment from King's County was quartered in the Poor House, at St. John, now the site of the Dufferin Hotel.

(13). Penelope Winslow, October 30, 1809, wrote her brother Edward, then in London, as follows: "Our summer has been uncommonly brilliant from the unusual interference of Hymen. I assure you he has made sad havoc among the Fredericton belles. Miss Jane Garden was foremost in the file; your flame Fanny Jarvis and Capt. Maule the next; my favorite Bessie Phair and Lieut. Stratton followed, and last of all Frederick Robinson and Miss Jane Paddock.

(14). The following is a copy of Permit to cut a certain quantity of timber. In those days special regard was had for the preservation of all timber fit for the purpose of the navy.

PERMIT.

Application having been made unto me by a number of savages, whose names are written on the other side, resident at Ristigouche, Carrigut & Chippegan, in the County of Northumberland, in the Province of New Brunswick, for leave to cut a quantity, not exceeding two hundred tons, of white pine timber, I do hereby grant leave or license unto the said savages at places called Ristigouche, Carrigut & Chippegan, to cut the said White-Pine Ton Timber Logs out of such Trees as on due inspection by Thomas Ray, Esq. (duly appointed for that purpose), shall be found unfit for the use of His Majesty's Navy, and to haul out the same. In executing this license, the said savages are not to cut any more timber than the quantity herein specified, on pain of having the whole seized, and they are to make report unto me of their proceedings under this License, within six months from the date hereof, during which time it is to continue in full force (unless legally superseded) and no longer, and after which no timber either to be cut or hauled out under pretence thereof.

Given under my hand at Kingsclear, in the County of York, in the Province of New Brunswick, the fifth day of June, in the fiftieth year of His Majesty's reign, and in the year of our Lord, one thousand eight hundred and ten.

ED. WINSLOW.

*Deputy Surveyor of His Majesty's Woods
in New Brunswick.*

(15). Died at Fredericton the 2nd of December, A. D. 1811, in the 53rd year of his age, Honorable William Balfour, Major General on the staff of the army in British North America, and lately President and Commander-in-Chief of New Brunswick. He was the fourth son of John Balfour of Edinburgh, and entered His Majesty's service in the year 1775 at the age of 16 years, an engineer by purchase in the 57th Regiment, passed through the several gradations from the rank of an Engineer to that of Lieut. General, and at every step excepting the Majority by purchase. When Col. Carleton assumed the government of New

Brunswick in 1784, Capt. Balfour was in command at Fort Howe.

(16). As the last named letter refers to Mr. Winslow's great weakness and illness, it is probable the year was 1814 or 1815. The last four letters were kindly handed the editor by M. Placide P. Gaudet, of the Archives Department, Ottawa.

CHAPTER VIII.

HON. JONATHAN BLISS.

Jonathan Bliss was born at Springfield, Massachusetts, in 1742, and graduated at Harvard University in 1763. Like Putnam, he was one of the leaders of the Massachusetts Bar. He went to England at the beginning of the Revolution with many other leading Loyalists, and remained there until its close. At the organization of the courts of New Brunswick, S. S. Blowers, a class-mate of Bliss at Harvard, and a fellow student at law in the office of Thomas Hutchinson, the then Lieutenant-Governor of Massachusetts, was appointed Attorney General, but a vacancy occurring in that office in Nova Scotia, Mr. Blowers was appointed to it, and Jonathan Bliss was appointed Attorney General of New Brunswick. The following letters were written at this time:—

BRISTOL, ENGLAND,

DEAR CHIPMAN:

5 February, 1785.

Jonathan Bliss, who I suppose you are apprised, is appointed your Attorney General, is now going to London to embark for New Brunswick in April. This has been a strange business. Bliss knew nothing of his appointment till he saw it in the Court Register. He saw the name "Samuel Bliss, Attorney General for New Brunswick," upon which he wrote to the Colonial Office by his proper name, and was informed he was the man. It is all mysterious; he knows not to whose influence he is indebted. However, it is given to a very worthy man, and we must acquiesce.

Yours sincerely,

JON. SEWELL.

WARD CHIPMAN, ESQ.

HALIFAX, 20th April, 1785.

DEAR CHIP:

I take six and nine pence on every grant for less than 500 acres. This intelligence, however, will not much avail you now, as Bliss writes me he shall be here this month. He seems pleased with the appointment; is at all times good humored, and I doubt not will reconcile the occasion to you as much as one could. Mathews (1) is greatly disappointed. I am told Judge Brenton has given me the Crown Circuits.

Adieu, yours truly,

S. S. BLOWERS.

WARD CHIPMAN, ESQ.

The following is the minute of instruction for the Attorney General's commission.

To our trusty and well-beloved Thomas Carleton, Esquire, Captain General and Commander-in-Chief in and over our Province of New Brunswick in America:

GEORGE R.

Trusty and well-beloved Jonathan Bliss, Esquire. We have thought fit hereby to authorize and require you forthwith to cause Letters Patent to be passed under the Great Seal of our Province of New Brunswick in America, constituting and appointing him, the said Jonathan Bliss, our Attorney General of and in our said Province, to have, hold, exercise, and enjoy the said office of Attorney General unto him the said Jonathan Bliss during our will and pleasure, and his residence within our said Province, together with all and singular the Rights, Salaries, Allowances, Fees, Profits, Privileges and Emoluments thereto belonging or appertaining. And for so doing this shall be your Warrant, and so we bid you farewell.

Given at our Court at St. James, the second day of February, 1785, in the twenty-fifth year of our reign.

By His Majesty's Command,

SYDNEY (2).

Attorney General Bliss arrived at Parr Town the 16th day of May, 1785, two days before its incorporation as the City of Saint John. He was then in his forty-fourth year. Four years later he married a

daughter of the Hon. John Worthington, a distinguished lawyer of Springfield, Massachusetts, to whom the offer of the Attorney Generalship of the latter place was made on the resignation of Jonathan Bliss, but declined, after which James Putnam was appointed. Attorney General Bliss obtained six months leave of absence. At this period it cannot be stated whether his mission was a prospecting one or to culminate a long cherished attachment. In 1792 Mr. Bliss purchased from John Porteus, of London, the lot and dwelling house on the southwest corner of King Street and Cross (now Canterbury) Street, St. John, for three hundred and fifty pounds, and in the deed described as lately occupied by Benedict Arnold. (3).

At the first election in St. John for the first House of Assembly, Jonathan Bliss, William Pagan, Christopher Billop, Ward Chipman, Stanton Hazard, and John McGregor, were elected as representatives. At this time the Court of Vice-Admiralty was constituted as follows:—Judge, Gabriel G. Ludlow; Advocate-General, Ward Chipman; Registrar, William Wyllly; Marshal, Mather Byles (4), Junior. The Court was opened at the City Hall, St. John, the 12th day of June, 1787, when the several commissions were read. The first question before the Court was one of prerogative. Jonathan Bliss moved for leave to file an information as Attorney General, to which Ward Chipman objected, claiming the right to do this exclusively as Advocate-General, and that he alone as such officer in this court had the right to prosecute all cases of forfeiture when the interests of the Crown were concerned. Judge Ludlow decided in favor of Mr. Chipman's contention, whereupon Mr. Bliss offered to file the information *ex officio* as Attorney General, which being opposed by the Advocate-General, the Registrar was instructed not to receive or file

the information. Mr. Ludlow held the office of Judge of the Vice-Admiralty Court until 1803, when he assumed the office of President and Commander-in-Chief on the departure of Governor Carleton for England. On that occasion the following address was presented to His Excellency by the officials and principal inhabitants of the City of St. John and others:—

To His Excellency Thomas Carleton, Esquire, Lieutenant Governor and Commander-in-Chief of the Province of New Brunswick, etc., etc., etc.:

The Mayor, Recorder, High Sheriff, Magistrates and principal inhabitants of the City of St. John, beg leave to approach your Excellency with the warmest sentiments of affectionate gratitude and respect.

Having been accustomed to look up to your Excellency as the Friend and Father of the Province from its first existence; having witnessed your unwearied exertions for the happiness of individuals, as well as for the public welfare and prosperity, and intimately experienced the beneficial effects of your wise, prudent and disinterested administration during a period of nineteen years, we cannot but feel the moment of even a temporary separation, with all the emotion of filial hearts.

We naturally call to mind on this occasion that to your Excellency's name the Province is in a great degree indebted for its origin, and that from your Excellency in a particular manner, this City has derived its existence; and when we reflect that the one from a rough and barren spot has become a place of great commercial wealth and importance; and the other, from an almost trackless wilderness, is brought to its present state of agriculture and improvement, and that these great objects have been effected by your judicious attention to the interests of each, in the measures you have adopted for the encouragement of both, our hearts glow with loyalty and affection to our most gracious Sovereign for his parental attention to the interests and happiness of his subjects, in the selection of his public servants, and with respectful gratitude to them for their diligent and faithful fulfilment of his royal intentions towards us.

Your Excellency, from your experience, observation and uniformly solicitous attention to the welfare of the Province,

must have required an accurate and intimate knowledge of its wants and interests, while therefore we regret your absence from the Government on the present occasion, we derive great satisfaction from the confidence we justly entertain that your representations while in England, to His Majesty and His Ministers, of the situation and circumstances of this Country, will greatly promote its future growth and prosperity, persuaded as we are, that its natural advantages and its capability of being made highly subservient to the great commercial and maritime strength and interests of the nation, are by no means inferior to those of any part of His Majesty's North American Dominions.

We request your Excellency to accept our warmest and best wishes that you, with your family, may have a safe and pleasant passage to Great Britain; that you may be received with the gracious smiles of an approving Sovereign, and again return to complete the work you have so happily begun in the formation and establishment of the Province over which you have so long and so successfully presided; but whatever may be your future destination, your Excellency may rest assured that we shall ever rejoice in your success, welfare and prosperity.

MUNSON JARVIS,
THOMAS HORSFIELD,
COLIN CAMPBELL,
J. WHITE,
WM. CLARKE,
JOHN BLACK,
JOHN ROBINSON,
A. PADDOCK,
JAMES PETERS, JUNR.,
RALPH M. JARVIS,
THOS. EMERSON,
JOHN CHALONER,
CHAS. HAZEN,
LEBARON HAZEN,
JOHN RYAN,
JAMES MITCHELL,
HENRY THOMAS,
VALENTINE W. PETERS,
JOHN SINNOT,
ABEL HARDENBROOK,

E. SANDS,
WM. CAMPBELL,
WARD CHIPMAN,
WM. S. OLIVER,
STEPHEN HUMBERT,
JAMES WHITE, JUNR.,
THOS. WILSON,
CHAS. J. TITUS,
WM. HAZEN,
WILLIAM ROBINSON,
WM. WHITLOCK,
WILLIAM F. ODELI,
ISAAC LAWTON,
CHRISTOPHER BILLOP,
GEORGE LEONARD, JR.,
GEORGE LEONARD,
CALEB WETMORE,
W. SCOVIL,
MARK NEEDHAM,
WILLIAM BLACK,

The following letters are of very great interest in connection with the application for the vacant position on the Bench.

FREDERICTON, NEW BRUNSWICK,

MY LORD:

16th November, 1893.

It is with concern I inform your Lordship of the death of Mr. Ludlow, Chief Justice of this Province, who died on the 15th instant, and I think it my duty on this occasion to suggest for your Lordship's consideration the expediency of pursuing in this and all similar instances the measures recommended by Mr. Strange on his removal from Nova Scotia, and again recently adopted in Lower Canada, not to supply such vacancies in these colonies by strangers sent out from England, but by appointment from the Bar in these respective Provinces. This will be productive of a double advantage. The prospect of professional promotion will induce men of talent in the country to embrace the profession, and they will look up to the government rather than to popular influence for means in their pursuits. In the present instance, therefore, I beg leave to state, that Mr. Bliss, Attorney General, and Mr. Chipman, Solicitor General, are both of respectable character, as men of integrity and professional ability, and have served in their respective offices from the foundation of the Province, and either of them is well qualified for the office of Chief Justice.

Should it, however, be thought fit in the present instance to prefer one of the assistant judges to the seat of Chief Justice, and not to fill the place by an appointment from the Bar, I would beg leave to state that Mr. Saunders, the senior assistant judge, is in every respect entitled to the consideration of this Government, and though he had not the previous advantage of professional practice, but came immediately from his course of study at the Temple to a seat on the Bench, yet he may be undoubtedly named as a fair candidate for the present vacancy.

Should Mr. Bliss be appointed to a seat either as Chief Justice or Assistant Judge, I hope that Mr. Chipman may succeed to the office of Attorney General, and in that case I would beg leave to recommend Thomas Wetmore to succeed Mr. Chipman as Solicitor General.

I have the honor, etc.,

M. HUNTER.

LORD CASTLEREAGH (5).

LONDON, 6th July, 18c9.

DEAR SIR,—

I received your letter of the 25th November a few days ago. If I could have had access to the Secretary of State's Office, you may be assured, Sir, that I should not have waited to hear from you, but on the first notice of the demise of the late Chief Justice have made your merits known in the proper quarter. I have, however, met with so little attention, or even civility, from the present Secretary of State, that I found it quite useless to attempt making any representations respecting the Province, and I have but just heard, accidentally, how the late vacancy is disposed of, than which nothing can be more absurd, or injurious to the King's service, but that is a consideration which has very little weight with our present Secretary.

I can only lament on this occasion my inability to do justice to your meritorious services. Mrs. Carleton and the girls join in best wishes to Mrs. Saunders and Miss Eliza. We had the pleasure of meeting Miss Saunders some time ago at Lady Dundas's, very much grown and improved.

I am, dear Sir,

Very faithfully yours,

THOMAS CARLETON.

It will be observed that the foregoing letter is from the Lieutenant-Governor to Judge Saunders. The following letter is from Mr. Bliss to the Earl of Liverpool (6).

ST. JOHN, NEW BRUNSWICK,
18th November, 1808.

MY LORD,—

The remembrance of your former notice and kindness encourages me once more to offer myself to your favorable recommendation. It is upon the occasion of a vacancy which has happened in an important office in the Province, by the death of Chief Justice Ludlow.

The office of His Majesty's Attorney General has been considered a step to the higher office, and has accordingly led to that appointment in the neighboring Provinces of Nova Scotia and Lower Canada very recently.

My Lord, I have executed the office of Attorney General of New Brunswick faithfully, and I trust not unworthily, almost

for twenty-four years, to very little personal emolument or advantage, but always with the hope of promotion, when an opportunity should offer consistently with His Majesty's service. This period may at length have arrived, if I should be so fortunate as to interest your Lordship in my behalf, so far as to make me known to Lord Castlereagh or other His Majesty's Ministers. It is impossible I should ever forget the beneficial effects derived from a similar act of condescension in recommending me to my Lord North four and twenty years ago.

I have the honor, etc.,

J. BLISS.

RIGHT HON. EARL OF LIVERPOOL.

Mr. Bliss also addressed the following letter to Lord Castlereagh.

ST. JOHN, NEW BRUNSWICK,

18th November, 1808.

MY LORD,—

It is not without greatest diffidence that I address your Lordship upon the occasion of a vacancy which has happened in a very important office in this Province by the death of the venerable Chief Justice Ludlow.

The office of His Majesty's Attorney General has been considered a step to the former, if there be no particular circumstance to prevent such promotion, and truly without the hope of promotion, no person suitably qualified would be found to accept the inferior, yet highly responsible office, in a country where the profits and emoluments are of very little consideration.

My Lord, I have executed the office I now have the honor to hold, almost four and twenty years, with fidelity, I trust, also, not unworthily, and in all that time I have not received the amount of three hundred and fifty pounds of the public money, exclusive of a small salary, for all services, ordinary or by special command.

The very late appointments by your Lordship's recommendation in Lower Canada, and one similar to it upon the last vacancy in Nova Scotia, have encouraged me to hope that my long and faithful services will not be passed over at this time without consideration; and I have great confidence that the character and conduct of my whole life will, upon investiga-

tion, recommend me to your Lordship's patronage and intercession with His Majesty for the further extension of His Royal Grace and beneficence in such manner as shall be most conducive to his services, to which the labors of my life have been devoted.

I have the honor, etc.,

J. BLISS.

RIGHT HON. LORD CASTLEREAGH.

The Government, following the policy acted upon in Lower Canada and Nova Scotia, appointed Attorney General Bliss to the office of Chief Justice.

The first precept after the Chief Justice's appointment, signed by him and Ward Chipman, was addressed to Walter Bates, High Sheriff of King's County. The following is a copy of the precept:

Jonathan Bliss and Ward Chipman, Esquires, Justices of Oyer and Terminer and General Gaol Delivery for the County of Kings by Virtue of His Majesty's Commission to us and others assigned:

To the Sheriff of the County, GREETING:

On the behalf of our Sovereign Lord the King, We command you, that you omit not for any liberty within your Bailiwick, but that you cause to come before us the said Jonathan Bliss and Ward Chipman, Esquires, and others our fellow Justices aforesaid, or any two of us (whereof Jonathan Bliss, John Saunders, Edward Winslow and Ward Chipman, always to be one) at the Court House of the said County on Tuesday, the twelfth day of September next, all the Prisoners in the Gaol of the County aforesaid, being, together with their Attachments and Indictments, and all other helps those Prisoners in any manner or way touching or concerning; and of the vicinage of every Town or Place, where the Felonies were committed, whereof the said Prisoners are Indicted, Appealed, or Arrested, as well within liberties as without, twenty-four good and lawful men to make a Grand Jury for the said County, also twenty-four good and lawful men by whom the truth of the matter may be better known and inquired into, and who those Prisoners in no affinity do touch, to do those things, which on the part of our said Lord the King shall be

enjoined them: Publicly also cause to be proclaimed throughout your Bailiwick that all they, who will prosecute against those Prisoners, be then and there to prosecute against them as shall be just: Give Notice also to all Justices of the Peace, Coroners, also all and singular High and Petit Constables, and Bailiffs of every liberty, within your Bailiwick, that they be then and there with their Records, Indictments, and other Memorandums, and do those things which to their Offices appertain in that behalf to be done: Be yourself and your under Sheriffs, together with your Bailiffs and other Ministers, then and there in your own persons to do those things which to your and their Offices appertain in this behalf to be done: Have you then and there the names of the Jurors, Justices of the Peace, Coroners, High and Petit Constables, Bailiffs and those whom you shall so cause to come and to whom you shall so give Notice: And have you then and there this precept.

Dated at Fredericton, the First Day of August, in the forty-ninth Year of the Reign of our Sovereign Lord George the Third, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, &c., &c., Annoque Domini 1809.

WARD CHIPMAN. [SEAL.]

TO WALTER BATES,
Sheriff.

Wm. Bliss

[SEAL.]

At this time the following gentlemen were Justices of the Peace for the said county, namely: John Coffin, David Picket, Daniel Micheau, Oliver Arnold, John Forrester, Lawrence Foster, Isaac Ketchum, George Pitfield, Thomas Ketchum, Rulof Rulofson, with the members of His Majesty's Council.

In the summer of 1810, Chief Justice Bliss removed to Fredericton, the seat of Government, closing a residence at St. John of a quarter of a century. In virtue of his new office he became President of Council, consequently his presence at its meetings in its Executive and Legislative character would be rendered necessary. This, with the difficulties at that

time of travel (7) by land and water in the Province, made the change of residence desirable, especially as the Chief Justice had reached the age of three-score and ten years.

The wife of Jonathan Bliss died at St. John on the 19th day of April, 1799, in her fortieth year, leaving four sons, namely, John Worthington, Lewis, William Blowers, and Henry. John died 5th January, 1810, in his twentieth year, after an illness of three days, consequent on a cold caught from breaking through the ice while skating on the Marsh Creek near St. John. Henry was a member of the Bar, practising at Fredericton. Not long after his father's death he removed to London, and for many years was agent for the Province of New Brunswick. He died in London, July 31st, 1873, aged seventy-five years. William Blowers Bliss was adopted by S. S. Blowers, Chief Justice of Nova Scotia, and was brought up to the Bar, and at his death March 16th, 1874, at the age of seventy-eight years, was one of the Judges of the supreme Court of that Province. He married Miss Anderson, an adopted daughter of Chief Justice Blowers, leaving two sons, clergymen in England, and three daughters, the eldest of whom married the Hon. Wm. Odell, (8) of Fredericton, who at the time of his death was a member of the Canadian Senate. Another married the late Bishop Binney of Nova Scotia, while the younger married Bishop Kelly of Newfoundland, but who was for many years a resident in the Old Country.

The last survivor of the sons of Chief Justice Bliss entered the counting-house of William Black & Co., with branches in Halifax and Scotland. Lewis Bliss, died in London, September 7th, 1882, in his ninetieth year. Although long absent from New Brunswick he was not forgetful of his native city, which contained the sepulchre of his mother and elder brother, John

Worthington Bliss. Two years before his death he presented to Trinity Church, St. John, the chancel window, one of the finest and costliest in America, a Memorial to the Bliss Family. So long as Trinity Church stands the name of Bliss can never be forgotten in New Brunswick.

NOTES.

(1). David Mathews was a New York lawyer and the last Mayor of that city under the Crown. He was also registrar of the Vice-Admiralty Court. At the peace he went to Halifax, N. S. He was appointed president and Commander-in-Chief of Cape Breton, then a separate Province. His daughter was the wife of William Wylly, one of the earliest admitted to the Bar in New Brunswick.

(2). Thomas Townshend, first Viscount Sydney, ceased to be Secretary of State in 1789, and upon his retirement was made a Viscount. Sydney Ward, and Sydney street in the city of St. John, as well as other places in the British Empire, are named after him.

(3). The premises were destroyed by fire in 1877, a few months before the great fire in St. John of that year. The site of the building is now occupied by the Dry Goods establishment of Vassie & Co., Limited.

(4). Mather Byles, jr., was the son of Rev. Mather Byles, D. D., who was the rector of Trinity Church, St. John, in 1791. Dr. Byles died at St. John, March 12, 1814, in his 80th year. The latter's father was also the Rev. Mather Byles, D. D., of Boston, where he died in 1788, aged eighty-two years. The daughters of Dr. Byles, rector of Trinity Church married as follows: Anna, to Thomas Desbrisay, a Lieutenant Colonel of Artillery in the British Army, in 1799; Elizabeth, to Wm. Scovil of St. John, she died in 1808, aged forty-one years. and Rebecca to Dr. W. J. Almon of Halifax, N. S., August 4th, 1785. The

grandfather, Dr. Byles, who died at Boston was a great wit which, as one has written, "created many a laugh and many an enemy." His first wife was a daughter of Governor Belcher. Belcher Byles, a son of the Rector of Trinity Church, died in England in 1815, aged thirty-five years. The Rev. Mather Byles, D. D., of Boston, was descended from Increase Mather and Cotton Mather.

(5). Lord Castlereagh, second Marquis of Londonderry, was the son of Robert Stewart, the first Marquis. He was born 1769, and died in 1822. He was brought forward as a candidate in 1790, as an independent freeholder of the County Down, to wrest one of the county seats from the influence of the Marquis of Downshire. At the time he became a candidate he was under age, but came of age during the progress of the canvass. The polling lasted forty-two days, when he was elected. His election however cost £60,000, and nearly ruined his family, and left his father poor for the rest of his life. He succeeded Lord Camden in 1805, as Secretary of State for the War and Colonial Department. He and George Canning were members of the same Government in the Duke of Portland's administration, and in consequence of a mis-understanding between them, in 1809, they fought a duel, in which Canning was slightly wounded in the thigh; both then retired from the administration. Castlereagh subsequently became Secretary of State for foreign affairs, and by the death of his father, April 11th, 1821, he became Lord Londonderry. The strain of public and official life was too great for him, his mind became unbalanced, and in a fit of insanity, August 12th, 1822, he committed suicide by cutting his throat with a penknife. He was buried August 20th, 1822, in Westminster Abbey between the graves of Pitt and Fox.

(6). Charles Jenkinson the first Earl of Liverpool, was born April 26th, 1727, and died December 17th,

1808. He was raised to the Peerage in 1786, as Baron Hawkesbury, and ten years later, in May, 1796, he was created Earl of Liverpool.

(7). It was not until 1816, that the first steamboat was placed on the river St. John, when the proprietors of the steamboat, "General Smyth," Captain James Segee, begged leave to inform the public that she would commence running on the 18th day of May of that year, between St. John and Fredericton, leaving Indiantown Mondays at 7 p. m., and Fredericton on Fridays. Cabin passage £1-2-6 with two meals, forward passengers 17 shillings, children under twelve years 15 shillings, passengers allowed 50 lbs. of baggage, dogs 5 shillings each, no other four-footed animal admitted on board.

(8). Hon. William H. Odell was the grandson of the Hon. Jonathan Odell. He studied law in the office of George F. Street, Fredericton. In 1835, he was admitted an Attorney at Law, and in 1838, he was called to the Bar, in 1857, he was appointed to a seat in the Legislative Council, and in 1865, he was appointed to the Executive Council with the office of Post-Master General, and on the Union of the Province, July 1st, 1867, he was by royal proclamation appointed to a seat in the Senate of Canada. Senator Odell, during the later years of his life resided at Halifax, N. S., the birth-place of Mrs. Odell. He died there suddenly, July 26th, 1891, aged eighty years. He was the last of the family, which for more than one hundred years from the organization of the Province, had been prominent in the social and official life of New Brunswick.



THE OLD CHIPMAN HOUSE—ERECTED A. D. 1787.

CHAPTER IX.

HON. WARD CHIPMAN.

John Chipman, the father of Ward, was a graduate of Harvard, and practised as a lawyer at the Bar of Massachusetts. In the Court-house at Falmouth, he had a paralytic stroke, from which he died 26th February, 1768, in his 47th year. His associates at the Bar erected a monument to his memory. He left a widow, two sons and four daughters, one of whom married William Gray, the eminent ship-owner of Salem, grandfather of Judge Gray, of the Supreme Court of the United States. Ward Chipman was in his 15th year when his father died. After graduating at Harvard, he studied law. The following memorial affords some interesting details of his early life:

To the Commissioners appointed by Act of Parliament, for enquiring into the losses and services of American Loyalists:

THE MEMORIAL OF WARD CHIPMAN, most humbly sheweth,—

That he is a native of Massachusetts Bay, was a Councillor of Law there, and ever has been and now is a faithful and loyal subject of His Majesty. That previous to open hostilities between Great Britain and America, he was active in assisting, in the defence of Judge Sewell's house at Cambridge, Massachusetts, September, 1774, when it was violently attacked by a mob. He was compelled to fly to the protection of the King's Troops at Boston. That he remained there in the practice of his profession, until that place was evacuated in the year 1776, that his business afforded him at that time a good living, and his connexions were such, as gave him the fairest prospect of rising to the most lucrative and honourable situation in the profession in that country.

That in the year 1777, he was in New York (having after the evacuation of Boston gone to England, and from there to New York), where he was appointed by Sir Wm. Howe,

then Commander-in-Chief, Deputy Muster Master General of His Majesty's Provincial Forces, which office he held to the close of the war.

That your Memorialist has a mother and sisters in Massachusetts Bay, who are in great degree dependant upon him for their support, that for this purpose he early in the War assigned over all his property, both real and personal, in that country, which they have been permitted to enjoy; he therefore makes no claim for loss of property.

That your Memorialist is now utterly deprived of the exercise of his profession, and has no means of support remaining, unless he should be allowed half pay of his late office, which would be very inadequate for that purpose. That he anxiously wishes for employment, rather than remain in London a useless cause of expense to the country, and therefore prays that his case may be taken into consideration, in order that under your report he may be entitled to receive such relief, as his services and the loss of his profession may be found to deserve, until such appointment shall be made for him, as may be adequate to his pretensions from the facts he has stated, and to his situation in life. (1).

Before the evacuation in New York, a commission was appointed to receive claims for supplies furnished to Government, of which Ward Chipman was secretary. As he had not completed his work, he proceeded to England in company with Sir Guy Carleton, Commander-in-Chief. They left New York 4th December, 1783. In his diary of the voyage over, he wrote:

1st January, 1784.—Very fine summer-like weather, Latitude 45. 38. Wind N. E. Course E. S. E. A crow alighted upon the ship and came down upon the Quarter Rail, and fed. One of the seamen caught the crow asleep on the Yard Arm at night, and put him into a vacant hen coop, where we fed him.

They arrived at Plymouth after a passage of forty-five days. He applied for the Attorney Generalship of New Brunswick, and refers to this fact in the following letter to Jonathan Sewell:

LONDON, 15th May, 1784.

MY DEAR SIR,—

I presume you have before this received my letter, announcing my determination to apply directly for the Attorney Gen-

eralship in the new Government. I have this day received an answer from the under Secretary of State, that those offices, by which I suppose he means the Attorney General and Solicitor General, are already disposed of, to persons who have been in the same line before; from this I conjecture that Blowers, who was appointed Solicitor General for New York, has now the appointment which I was seeking for.

This deranges me a little, but as Colonel Fox (2) is expected in Town, I will not despair, but push my interest with him to the extreme. Since your proposal of permitting Jonathan to go out with me, I have felt an eagerness to succeed in my application, which makes me peculiarly unhappy at any obstacle that arises to the execution of the plan. What can be done, I will do.

Ever devoted,

WARD CHIPMAN.

JONATHAN SEWELL, ESQ.,
Bristol, England.

The following extracts are from a letter from Jonathan Sewell, addressed to Ward Chipman, of New York, dated at Bristol, England, 1st February, 1783:

You seem pleased with Jonathan's drawings, but if you are fond of music, his astonishing proficiency on the Violin, the best musical instrument in my opinion, would raise your admiration greatly. He now plays the overtures of the first masters, with great correctness; but though I am pleased with his proficiency in these flimsy parts of education, which if they answer my intention, will serve as amusements to keep him out of mischief, when he is from under my eye, I am much more pleased with his progress in the more estimable branches of literature. He is now at the head of the Grammar School, and acts as a kind of usher to his master, with whom he is a great favorite.

Stephen's progress also comes up fully to my most sanguine expectations; he has out-stripped all his equals and many of his superiors in standing when he entered the school. The boys' powers are of a different cast, Jonathan's are impetuous and penetrating, Stephen's are calm and solid. Jonathan's impetuosity is such as hurries him through errors and mistakes, because he cannot stop to look a second time, at what he does not comprehend at the first glance. While on the

other hand such is Stephen's cool patience, that until he is certain the first step is right, nothing can induce him to attempt the second. The one submits his judgment to rules, the other trusts to the quickness of his apprehension. Should they both be bred to the Bar, Jonathan would turn out the most captivating orator, and Stephen the most thorough lawyer. Should they and you live until they reach maturity, I believe you will be convinced these are pretty exact out-lines of their characters. You will call all this nonsense, but I have a sort of a pleasure in it, and fancy you must, too.

In 1784 Thomas Carleton was appointed Governor of New Brunswick. He was a brother of Sir Guy Carleton, afterwards Lord Dorchester, and at the evacuation of New York Colonel of the 29th Regiment of the line. Mr. Chipman refers to this and other matters in the following letter:

LONDON, 9th July, 1784.

MY DEAR SIR,—

In my letter of two days ago, I informed you of the arrangements for the Province of New Brunswick. Colonel Carleton kisses the King's hand to-day upon his appointment. Next to Col. Fox, he is undoubtedly the best man that could be sent. All the judges are most unexceptionable characters for such appointments, and exclusive of a little personal disappointment in reference to the Attorney General Office, which, after all, exclusive of the rank, would be no great object to me, as the difference between the salary and my half pay of ninety pounds stg. is only sixty pounds a year. Sir Guy Carleton has said that I am put down as Solicitor General; to this appointment I think there can be no salary equal to my half pay. I shall, however, accept the office without salary, and depend upon my practice for an income sufficient to maintain me; indeed, I have no alternative, it is ridiculous for me to remain in this country till I spend my last shilling.

I am now taking it for granted that my appointment is secure, but from what I have on former occasions experienced, I may still be mistaken, it cannot be very long before the arrangements are made public, when I shall ultimately decide, and, I imagine, as the season is so far advanced, we shall be much hurried in our embarkation. My present plan is to go to Halifax, and be governed by circumstances there, with

respect to going to St. John this winter, though Halifax is so much crowded, that I have a little doubt whether I can be accommodated there to my mind.

I have no doubt you will be nominated one of the Council, and I am sure we shall have as good a society and live as happily and cheerfully in the Province of New Brunswick as in any part of the King's dominion. I confess, I had rather move in a reputable and respectable line in that country, with a competent subsistence, than with the same income support the mortification of seeing in obscurity, millions insulting me with their wealth in this country.

Adieu, and believe me unalterably yours,

WARD CHIPMAN.

JONATHAN SEWELL, ESQ.,
Bristol, England.

The following perfumer's bill, showing some of the purchases of Mr. Chipman before embarking for New Brunswick, is somewhat interesting, as well as amusing:

August 16, |84.

MR. CHIPMAN,

Bot. of J. BERGER, PERFUMER,
No. 104 Strand.

	£	s.	p.
16 Pound of Best French Powder, ...	0	12	0
1 Japan Dressing Box, ...	2	2	0
3 Pots & 2 Bowles of Pomatum, ...	0	5	0
1 Point of Lavender Water, ...	0	4	0
1 Pound of Windsor Soap, ...	0	2	0
2 Tooth Brushes & a Shaving Brush, ...	0	3	0
1 Bottle of Tooth Powder, ...	0	1	0
1 Bundle of Rowlers & Sticking Plaster, ...	0	1	0
1 Half Peace of Ribbon, ...	0	5	0
1 Hundred of Tooth Picks, ...	0	0	6
	£3	15	6

Recd. J. B.

BRISTOL, 31st August, 1784.

The correspondence between Sewell and Chipman still continued, as witnesseth the following letter:

DEAR CHIPMAN,—

. I could scold at you, Chipman, for so cavalierly taking a French leave of an old friend, but though my friendship, sincere and hearty as it was in the beginning, is now, and ever shall be, can form no satisfactory excuse for you, yet I will not, cannot, scold, at least until I receive your first letter after your arrival. In it I beg you to let me know, in explicit terms, whether it will be agreeable to you to take Jonathan under your tuition, which is all I want. My desire is to support him in every expense; but even if I can get out when he goes, I would choose to have him with you; he will never make any proficiency in the study of the law with me.

If you cannot take him, I shall turn to Blowers or Brenton. Jonathan's wishes and mine are for his being with Chip, his studying under me, were there no other objections, would not give him so regular an introduction to the Bar, as I am not a practitioner. In short, if you can't or won't take him, it will be one of the most cruel disappointments I have met with in life; but I know you will, and no more at present on that. I doubt not, Chipman, your rising, as you modestly express it, to something, and from a presentiment, will add, *great*, though I cannot help again lamenting your misimprovement of the past harvest, and I mean only to keep in your view the Rock, which you once touched; it is true you once said while you were here, you have had your "cake and eat it," but at the beginning of a voyage, prudence directs not to squander the "cake." You are young, and now is the time to save what in old age you may want. Accept the warnings of a friend, who, as he once before told you, speaks from his own experience. But at any rate, Chip, keep some of your old wine, one bottle at least, until I come to New Brunswick.

I beg you to be very particular in presenting my most sincere and cordial regards to Ned Winslow, Will Tyng (3), and all others who will accept them kindly; assure them my friendship for them is unabated by time or absence, and that I see them daily and hourly, though in a glass darkly, but hope soon to see them face to face in New Brunswick.

Adieu, sincerely,

JON. SEWELL.

WARD CHIPMAN, ESQ.

In the fall of 1784, Ward Chipman arrived at New Brunswick with Thomas Carleton, the Governor, and

Jonathan Odell, Provincial Secretary. The next spring Jonathan Bliss, Attorney General, and young Jonathan Sewell arrived. Soon after their arrival, Jonathan Sewell wrote to his father as follows:

CITY OF ST. JOHN,

30th June, 1785.

HONOURED SIR,—

Two months have elapsed since I arrived, and not a line have I received from England. Mr. Chipman has at length opened his office in this city, and I am happy to inform you has as great a share of business as any practitioner in St. John. Our office hours are from eight in the morning till three in the afternoon; from this time I have the day to myself; and indeed, as I am an early riser, generally between 5 and 6, I have two full hours for a morning walk, which at this season is delightful.

Two Sundays ago, I was as far up the river as Major Coffin's Manor, and was exceedingly pleased with the appearance of the shores on both sides; it is really enchanting; figure to yourself St. Vincent rocks, covered with finest firs, and the other various species of evergreen; not that the river has that appearance in every part, far from it, the most delightful meadows in some places may be seen, in others lofty hills, some cultivated, some in their natural state, but all the finest land in the world.

I will here mention the herring fishing; this is a prodigious advantage to the country, and promises to be still greater. Fifty thousand barrels of this kind of fish alone have been cured this season; indeed the shoales that come in with every tide are amazing. The number of herring now dead upon the shore, all lost for want of salt, is supposed to exceed what has been cured. After the herrings leave, the shad and bass come in, and continue until the salmon fishing commences, which is now in perfection; a great quantity has been caught already, and they are still in expectation of more.

What can be a more promising field for a merchant? What more can I add? Mr. Chipman's marriage is, I believe, undoubtedly fixed; he will, I suppose, be married before the winter, as he does not deny now he is courting. Mr. Hazen and his family are particularly attentive to me, more so than I could have expected. Mrs. Hazen treats me as a mother, and I can never be too much at their house; they are con-

tinually telling me I should make it my home, and I almost do, for I breakfast, dine, and sup there just when I please.

Your dutiful son,

JONATHAN SEWELL.

JONATHAN SEWELL, ESQ.,
Bristol, England.

The following letter to Jon. Odell, Secretary to the Governor and Council, refers to the charter of the City of St. John, which charter was copied for the most part from the charter of the City of New York:

SIR,—

The draft of the charter of the City has been so long delayed and is of so great a length, that I have taken the liberty to send the enclosed without postponing it so long a time as it would necessarily take to have a fair copy made.

When the Governor and Council shall have approved of any part of the draft, and filled up the blanks, if they think proper, such sheets may be taken off, and be engrossed on parchment, while the remaining parts shall be under consideration. I humbly submit whether the City should not be called the City of St. John instead of the City of St. John's.

WARD CHIPMAN.

HON. JON. ODELL,
Secretary to Council.

The charter took effect on the 18th day of May, 1785, and at the session of the Legislature, 1786, it was enacted by the Governor, Council, and Assembly, "That all and singular letters' patent, grants, charters and gifts, sealed under the great seal of this Province, heretofore made and granted unto the Mayor, Aldermen and Commonalty of the City of St. John, be, and are hereby declared to be, and shall be good, valid, perfect, authentic and effectual in the law, and shall stand and be taken, reputed, deemed and adjudged good, perfect, sure, available, authentic and effectual in the law, against the King's Majesty, his heirs and successors, and all and every person or persons whomsoever according to the tenor and effect of the said letters' patent, grants, charters and gifts, and that the

same are to all intents and purposes hereby ratified and confirmed." This enactment confirmed the charter of the City of St. John, and was in consequence of instruction from the British Government.

The act of Governor Carleton in passing letters' patent under the great seal of the Province, incorporating the city, did not meet with the approval of the Colonial Secretary, hence the above, in part recited, legislation. The following letter from Amos Botsford refers to the first election to the House of Assembly :

WESTMORLAND, 7th November, 1785.

MY DEAR SIR,—

I fancy by this time my friend is on the hustings, eager with expectation, awaiting the movements of this day, big with the fate of Lower Cove. How many anxious hearts around you? I flatter myself success on your side; I really hope so. Our election comes on next week; I may perhaps go, perhaps not, some little canvass going on here, but small compared with the capitals, St. John and Halifax. The latter, if possible, exceeds yours, open houses, strong and powerful interests against powerful and strong ones; one party says, "no Lawyers," but Blowers and Uniacke are connected with powerful interests. And God bless the Lawyers.

Yours,

AMOS BOTSFORD.

WARD CHIPMAN, ESQ.

In the St. John annals of the century, no more exciting election than this has ever been held. It culminated in the trial and conviction of William Lewis and John Ryan, editors and proprietors of the *St. John Gazette and General Advertiser* for libelous articles on the government.

A number of rioters were arrested, convicted, fined and imprisoned. The election continued for fifteen days, and the Government candidates, Jonathan Bliss, Ward Chipman, William Pagan, Christopher Billop, John McGeorge and Stanton Hazard were in the end returned as duly elected.

The younger Sewell informs his father of Mr. Chipman's marriage in the following letter :

ST. JOHN, N. B., December 30th, 1786.

DEAR SIR,—

I have some news, though but little. Upon the 24th October last, Mr. Chipman and Miss Hazen became one; no male friend was present at the ceremony, except your son, and only two female friends outside of the family. I admired her before marriage, but since, I have adored; she is perfect, and calculated to make Mr. Chipman happy. In a family so formed to please, and who pay me every attention, even to a fault, you may easily determine that I want for nothing but the presence of my real home, with my adopted parents to render my situation happy and enviable.

Your affectionate son,

JONATHAN SEWELL, JUNR.

JONATHAN SEWELL, ESQ.,
Bristol, Eng.

The notice of the marriage is in the following terms :

Married, on Tuesday evening, 24th October, 1786, at Portland Point, St. John, by Rev. George Bissett, Rector, Ward Chipman, Esq., M. P. P., Solicitor General of New Brunswick, to Elizabeth, eldest daughter of the Hon. William Hazen (4).

The residence of Ward Chipman was the Leonard house, on the corner of Dock and Union Streets, St. John, N. B. It had a fine terrace in front, and was the first residence of Governor Carleton in New Brunswick. In 1786, Ward Chipman purchased for £70, from Simonds, White & Hazen, a plot of ground, having a frontage of 200 feet, on Union Street, and extending back 400 feet. He erected a dwelling on the centre of this lot, which dwelling is still standing. While its erection was proceeding, 1787, he wrote his brother-in-law, William Gray, of Salem, Mass., respecting it, as follows :

The expensive building in which I am engaged has embarrassed me in a degree beyond what I intended, the expense having exceeded all previous calculations.

On the 10th of July, 1787, a son and heir was born, who afterwards became Chief Justice. On receiving the poetic congratulations of young Jonathan Sewell, at that time a student in his office, Ward Chipman replied also in poetic numbers, as follows :

Dear Jack, the wishes you impart,
Most sensibly have touched my heart,
While you participate the joy,
We feel to see the infant boy,
And with such fond affection pray,
That bless'd may be his every day,
We scarce can speak the warm return,
With which our grateful bosoms burn,
This then is our most ardent prayer,
That this our first born son and heir,
May by your virtues rise improved,
Like you deserving and beloved,
No anxious hour will then alloy,
Our hopes indulge of future joy,
Like this each day shall pass serene,
Nor grief, nor care distress the scene.

The following letter from an old friend in Massachusetts is interesting :

BOSTON, Mass., 5th March, 1789.

DEAR CHIP,—

Ever since the receipt of your favour, by Mr. Parker, I have determined to thank you for it. But, as regularly, some nonsense or other prevented me. How far my conduct to that gentleman evinced any pleasure in the recollection of an old friend, he best can tell. I will only add, it will afford me real satisfaction if you put it in my power to serve you or your friends here, for, without a compliment, I recollect our former intimacy with much pleasure, which, I fear, is more than either of us can say of many we then knew. Parker left this about three weeks. I had last post a letter from him, dated New York; he proceeds thence to Philadelphia, and I hope returns here. He has chose his excursion well, not only as being present at the forming of the new government, but that it will give him an opportunity of seeing many of the

Mr Parker referred to in the above letter, was Robert Parker, father of the late Chief Justice, Hon. Robert Parker, and of Hon. Neville Parker, Master of the Rolls.

most respectable characters in this country, to say nothing of the ladies, to whom he has been most particularly attentive, but as yet without effect. What the placid beauties of the Philadelphia Quakers may do, remains yet to be tried. You, my good friend, as well as myself, have, I think, passed the Rubicon. I flatter myself, business or pleasure, or both, will induce you to favor us with a visit; in that case, do not presume to leave your lady behind. You would, I fancy, find many alterations in this place, and some painful ones. Do not, however, let that deter you. I promise you, that you shall find some who will do their utmost to make you forget others. From a letter which Mr. Parker showed me some time since of yours, I find the Canaan you are thrown into has not wholly cured your longing after the flesh pots of Egypt, in the shape of Vinesour. I would with pleasure have sent you some had any been to be had. I have myself no aversion to it, and have not seen a mouthful this long time. A perfect knowledge of your uniform piety leaves me no doubt you gave praise to Providence for inspiring a wild turkey to visit you per Leavit last passage. Nothing short of divination could have informed you I sent it. Apropos, I am informed you are building, and have a garden, of course. I have a very good one, and plenty of seeds, etc., etc.; if anything of that sort is useful, inform me and I will send them with great pleasure. To any of our former acquaintances, to whom you think the remembrance will be pleasing, pray offer my respects, and believe me, dear Chip,

Yours sincerely and cordially,

S. A. JEFFREY.

The following certificate relates to the admission of Gabriel V. Ludlow on applying for admission as an attorney:

To the Honorable His Majesty's Justices of the Supreme Court, in the Province of New Brunswick:

I certify that Mr. Gabriel V. Ludlow has served as a clerk in my office with ability, industry and diligence, from Trinity Term, 1785, to Trinity Term, 1789, inclusive; that he is a young man of irreproachable morals, and that I recommend him as in every respect amply qualified to be admitted to be an attorney of this Honorable Court.

Given under my hand this 23 day of January,
in the year of our Lord 1790.

WARD CHIPMAN.

Mr. Ludlow, shortly after his admission as an attorney, removed to New York, and wrote to Ward Chipman as follows:

The practice of the law is much more laborious business here than with you, as we do business frequently from six in the morning until late in the afternoon; the fees are very low and proceedings very lengthy; however, the practitioner makes it up in court fees. The number of the Bar exceeds all bounds, notwithstanding which the most eminent make, I imagine, nearly two thousand pounds a year.

Mr. Ludlow was a son of the Honorable Gabriel G. Ludlow, at this time Mayor of St. John. He died at New York, 30th of April, 1825, aged 57 years. He about this time wrote the following letter, respecting ship building in the Province of New Brunswick:

Our province must, and will, get on. There have not been built less than 20 square rigged vessels, besides sloops and schooners here; they bear a good price, both in England and the West Indies; this, indeed, would become an amazing branch of trade if among the articles permitted to us to import from the United States, pitch, tar and turpentine, had been included, which are indulged to the English West India Islands. The difference has, I suppose arisen through the idea that this province produced trees which afforded this article, which is not the case, which subjects us to great inconveniences in the present staple export we have.

Shortly after Jonathan Sewell's admission to the Bar of New Brunswick, he removed to Quebec, where he met with immediate success, and whence he writes as follows to Mr. Chipman:

QUEBEC, 7th July, 1792.

DEAR SIR,—

This is the sixth day of our July term, which continues fifteen days. It is rather a banner one, only one lawyer, besides myself, has issued any writs during the vacation, and you may judge how I stand in public favor when I tell you that I have issued two for his one, and have the defence for every suit, without exception. We have witnessed as warm an election (in comparison) for our Lower and Upper town, and our county of Quebec, as ever Westminster or Middlesex

experienced. At the county elections His Royal Highness, Prince Edward, signalized himself, much to his credit and to the great confusion of one party, who attempted by every means and artifice to keep alive that odious distinction of French and English, His Highness harangued the multitude in a style that would have received approbation from the tongue of an experienced speaker. He secured the election of two worthy men. His language was so marked to one of the French gentlemen that he meant to have brought an action against the Prince; but was, however, afterwards better advised. I wished he had, for His Royal Highness's defence would, I have every reason to think, have fallen into my hands. The issue, however, of the whole is a contested return and a petition to the House where I am retained for the city members, and will, I hope, keep them sitting. I have not time for more; with my compliments to Mrs. Chipman and Ward, whom I expect and hope to see in Canada in a few years, at most, I am, Dear Sir,

Your ever obliged,

JONATHAN SEWELL, JUN.

WARD CHIPMAN, ESQ.,

St. John, N. B.

To this Mr. Chipman replied, as follows:

ST. JOHN, N. B., 29th October, 1792.

DEAR JONATHAN,—

Your letter of 7th July afforded me great pleasure. Your success has been without a parallel in America, and has laid a sure and solid foundation of independence at an early period of life. I am not alarmed by the load of business which is upon your shoulders, as the more business you do and have to do, the more you will be able to do, and perhaps with less fatigue than you would do one-fourth part of it when you might be idle half your time. It is laughable enough for me who never had any method to be preaching to you who do everything by rule. Alas, *Video meliora probo deteriora sequor*. This, however, is principally because I never yet had business enough to employ me half my time, and this to one of my indolent turn will be a perpetual source of procrastination; while I was a student I could apply myself without intermission, since that I have scarce had business enough to stimulate me to retain what little I then learnt. When my business was lucrative, which was at New York,

great fees were received for very little, and without the smallest variety in the objects. I look forward to business to employ me some time or other, but it is much like my dependence for many years upon a high prize in the State lottery, and will not happen, I fear, till your liberal policy in Canada has peopled those provinces on the one side and Governor Wentworth's activity has filled Nova Scotia with settlers on the other side, when, being in the centre, we shall reap the fruits of your prosperity in some degree. Mrs. Chipman is much obliged by your kind remembrances, and joins me in the most affectionate wishes. Little Chip grows apace, and, by the time he is five years old, I shall be able to say of him, as it is said of Dean Swift, in his life by Sheridan, that at that age he can read a chapter in the Bible. This letter will be forwarded to you by a sloop that takes Mr. McGill (5) to Quebec. Adieu, my dear Jonathan,

Yours sincerely and affectionately,

WARD CHIPMAN.

Stephen Sewell also studied with Ward Chipman, and after his admission as an attorney went to Quebec to join his brother, Jonathan; subsequently removing to Montreal. He was the fourth student from the office of Ward Chipman; the others were Jonathan Sewell, Thomas Wetmore and Gabriel V. Ludlow. Of the four, Thomas Wetmore alone remained in New Brunswick. Between Mr. Chipman and the Sewells there continued a friendship begun before the troubles culminating in the loss to the Crown of the thirteen colonies, and only ended in the close of their lives. The following letters from Stephen Sewell to Chipman are of considerable interest:

QUEBEC, 21st November, 1791.

DEAR SIR,—

I cannot too much thank you, sir, for yours of the fourth of October; my present mode of life offers very few topics for letter writing. Our new constitution, which it was expected by many sages would be ushered into the provinces by a line of battleships, has at last sneaked here in a small brig. There are, I am told, many essential changes from the copy which was sent out, very much for the better, and that

it does not fail of giving pleasure to the English merchants. Our politics, at present, may very well be compared to a stone hedge, a confused mass. Quebec is a pleasant place, and the inhabitants hospitable and united together. Most of the amusements have begun, counting Jonathan, in his musical element, who has helped in one of the first concerts that has ever been here in America, twenty-three performers, mostly amateurs.

Your affectionate friend and pupil,

STEPHEN SEWELL.

WARD CHIPMAN, ESQ.

MONTREAL, 5th March, 1792.

DEAR SIR,—

You will learn from my letter to my father the reception I have met with at Montreal, which has indeed been much beyond my expectations. The characteristic of the people I find is hospitality, and great attention to strangers. Almost everyone is in trade, and many are rich. There are a great many more English and Scotch in this district and town than in Quebec. The fur trade is the support of the town, without which it would probably dwindle. It is now upon the increase; there has been, and still is, a great deal of law. The Canadians of this district are litigious and rich, which were the words of Mr. Davidson when he advised me to sit down here. The two Walkers have certainly had it in their power to have laid up great fortunes, but they have lived very extravagantly; as an instance, at Mr. James Walker's, we had venison, and Burgundy in excellent order, ale which he said stood him in more than his Maderia, and many other varieties. In this manner he has always lived, and if he has still a fortune, what must have been his practice? Immense, if he should retire, and is really my friend. It appears a small gleam of hope but, sincerely, I believe neither the one nor the other; though whether he is really my friend or not, I think it could really make but little odds to me, nor do I really care. Have the kindness to make my respectful compliments to Mrs. Chipman, and bow to little Chip. I shall expect him at Montreal in a few years.

Your most affectionate and obliged pupil,

STEPHEN SEWELL.

WARD CHIPMAN, ESQ.

The representatives for Northumberland, at the first general election, were William Davidson (6), a resident on the Miramichi, and Elias Hardy, of the St. John Bar. On the death of Mr. Davidson, he was succeeded by Harris Hailes, of Fredericton. At the second general election, Ward Chipman and John Black (7) were returned as members.

The following letter was written to Mr. Chipman by an old acquaintance:

LONDON, March 26, 1792.

MY DEAR CHIPPY,—

God in His merciful Providence has at last opened me a door to escape out of England, and I have embraced the opportunity with as much joy as I ever did to get out from the worst prison I was ever in. It does not indeed bring me to New Brunswick. It carries me rather farther off, to the coast of Africa, where I am going as Surveyor General of land to a large company who are about making a settlement on the Island Boolam, which lies in the Atlantic Ocean, about four miles from the main continent of Africa, in 11°, some minutes N. Lat., right opposite the mouth of the Rio Grande. They give me £60 Ster. p. ann. Salary, and subsistence, and 500 acres of land gratis. Other settlers giving £30 for that quantity. The salary, to be sure, is no great thing, but anything with something to eat is infinitely before nothing and starving by inches; but the land will be soon worth £500, if the settlement should succeed, and should it prosper greatly, much more, and that in a short time. At any rate, I am glad I am leaving England, which never pleased me, and which has been made ten-fold more disagreeable by my being forced to stay in it against my will. I expect to embark in two days from this; you shall hear from me as opportunity offers, and perhaps I may have it in my power to institute a commercial intercourse with St. John for your house frames and other building materials, as I think they will be able to get them much cheaper with you than from the Baltic.

For the present, adieu. Remember me very kindly to my friends; tell them I do not give up hopes of yet returning to my loved America. God bless you and them is the frequent wish of

Yours,

BENJ. MARSTON.

P. S.—Don't neglect to tease Les Dernier, when you can do it, without trouble to yourself. Why can't you institute a process against my real property at Miramichi, have it sold for whatever it will, and apply the money to the payment of whatever I owe, of which I have given you an account. The Boolam Island Company go out under a Governor, a Lieutenant Governor and a Legislative Council, chosen by the settlers, who go out with them, whose names are as follows:

Henry H. Dalrymple, Esq., ... *Governor.*

John Young, Esq., ... *Lieutenant Governor.*

Jno. King, Esq.,

Peter Clutterbuck, Esq.,

Philip Beaver, Esq.,

Francis Brodie, Esq.,

Charles Drake, Esq.,

And others,

. *Council.*

The following is a letter from Ward Chipman to Jonathan Sewell:

FREDERICTON, N. B., 23rd February, 1793.

MY DEAR JONATHAN,—

Here I am once more, to my great mortification, a legislator. The Governor wished me very much I should be in the House again. I offered myself in the city, but Lower Covers, headed by Hardy, were uppermost, and I was distanced by him. I put up in York, but too late, the bulk of the voters were engaged. I had, however, every respectable one on my side. A party was sent off without my knowledge to Miramichi, where I came in all hollow, without the faintest opposition. My object from the beginning was to get the Speaker's chair, or I would never have become a candidate. A majority of the members are quite under the influence of St. John politicians, so that I find I can be of no service to the public, and most cordially wish I was clear of them, and, like Bliss, enjoying my own fireside. I continue jogging on in the old way; business is as low as ever, and it is with great difficulty I can bring the year about with all my resources. As the country gets on, I think it must become better; this is the only ground of consolation I have. My gout grows less troublesome, one moderate attack in the year is now my quantum. Little Chip is, I assure you, a very fine boy; he is yet but five and a half years old, and has been twice

through his accident—all his own choice, as he is at liberty to go to school or stay at home. Mrs. Chipman is well and speaks of you often with great affection.

Adieu, my Dear Jonathan,

WARD CHIPMAN.

JONATHAN SEWELL, ESQ.,

Solicitor General.

The following letters need no special comments, and will all be interesting to the reader who is interested in the fortunes of the persons mentioned, and the history of their time and place:

The following refers to the death of Chief Justice Smith, of Lower Canada:

QUEBEC, 7th December, 1793.

Our Chief Justice died yesterday, after a tedious and flattering illness, which led us from day to day to look for his recovery. Nothing can exceed the confusion which his death will create. It is a great blow to the political interests of Canada, from which she will not recover for many years. The legal affairs of the country suffer more especially, for we can never have a Chief Justice superior either in ability, integrity or experience to Mr. Smith (8). I never expect to see his equal, whoever he may be. The Attorney General starts as a candidate for the office; he will not, however, in my opinion, succeed. My spirits on this occasion are far, very far, below the proper standard. I feel his loss as that of my best friend, independent of my share in the public concern, which is general, and extended to every individual. My best compliments to Mrs. Chipman and little Chip, and to all my friends.

I am, dear sir,

Your faithful servant,

JONATHAN SEWELL.

WARD CHIPMAN, ESQ.

The following letter to Jonathan Odell refers to salary and fees as a Crown officer:

ST. JOHN, N. B., 27th December, 1793.

DEAR SIR,—

I am much obliged by your letter of 21st inst. communicating the direction of the Governor and Council that the sum of seventy-five pounds be appropriated towards the payment of

the Attorney General and Solicitor General, for proceedings instituted by order of the government on behalf of the Crown from the commencement of the province. I have, agreeably to your request, prepared the bills for the several services rendered by me by order of the government. The amount will, I am aware, appear large, but the bills are drawn up conformable to the "Ordinance of Fees," except the retaining fees charged in the several cases. I would only beg leave to remark, further, that as Solicitor General, I am entitled to no salary, or perquisites of any kind, that this office prevents me being employed in other interests against the Crown, and that I have been acting prosecuting officer for the Crown, now nine years; at the same time I must acknowledge that I never expected any compensation for these services, aware that in the infancy of the government, it was the duty of everyone to contribute a proportion of his services to the public, without any other reward than that, which is indeed above all others, a consciousness of having done our duty. On the other hand, it behooves me to mention that upon the very gracious attention of His Excellency, in appointing me Attorney General, he was pleased to assure me that I should, even if superseded, enjoy the benefit of one year's salary; that I accordingly received, by his direction, one hundred and fifty pounds currency out of the Butler fine. I will only add, that I shall remain perfectly satisfied with whatever decision shall be made by the Governor and Council upon the bills which I enclose, either for rejection or diminution, persuaded that the principle which may govern them will be tempered with a due regard, as well to private justice as to public interest.

Yours, etc.,

WARD CHIPMAN,

HON. JONATHAN ODELL.

The following letter refers to the visit of Prince Edward, Duke of Kent, to St. John:

FREDERICTON, 15th July, 1794.

MY DEAR JONATHAN,—

I am here to attend our Summer Term. Mrs. Chipman accompanies me, and little Chip, who is with us on his first excursion from home. You will see by our newspapers, if any reach Canada, that Prince Edward has paid us a visit from Halifax, and I had the honor of entertaining him. All you have said of him in your letters falls infinitely short

of what I found him to be. He is, without exception, the most accomplished character I have ever seen; his manners are so dignified, and at the same time marked with so much condescension, he discovered so much good sense, sound understanding, and so impressed my mind that I can find no bounds to my admiration of him; and you may be assured I was not a little gratified with the handsome manner in which he spoke of you. I confess the circumstance has been peculiarly gratifying to my feelings, the enjoyment of so distinguished an honor as that of entertaining a son of our beloved sovereign. His Royal Highness was pleased to express himself in very obliging terms respecting the accommodation while with us. I remain,

Yours ever,

WARD CHIPMAN.

JONATHAN SEWELL, ESQ.

On Upper Canada being set off from Lower Canada as a separate province, Jonathan Sewell, then Solicitor General of Quebec, advised Ward Chipman to apply to the British Government for the office of Chief Justice of the first named province (9). In respect of the suggestion, Mr. Chipman replied as follows:

ST. JOHN, N. B., 10th April, 1796.

MY DEAR SEWELL,—

Accept my kind thanks for letters. I was much agitated at perusing their contents, and knew not for some time what steps to take. I had no hesitation about an application for office of Chief Justice of Upper Canada; if I could suppose there was the smallest chance of success, and even without that I have made use of what interest I have in England, which indeed is very small, being no more than the supposed inclination of Mr. Knox, the agent of this province in London, to serve me. To him I have stated all my pretensions and wishes to succeed to that office, but without any other hope than that a bold step may hold me up for something hereafter, in case an opportunity should offer. I have said nothing to him about a Puisne Judgeship, as I have many doubts from all I can learn of the climate, society and living in Upper Canada, and from a consideration of the sacrifices I must make, and inconveniences submit to by removal, whether it would, upon the

whole, be eligible. I have consulted your father, who is delighted with the idea of accompanying me to Canada, in case I could obtain the office of Chief Justice. He peremptorily decides against the idea of accepting a Puisne Judgeship. I will not, I cannot believe that after all my services and the sacrifices for the public, and the exertions I am disposed to make, if there should be an opportunity, that I must linger out a life of mortification and disappointment without a competence for present subsistence or a prospect against any unseen accident. I remain,

Ever your friend,

WARD CHIPMAN.

JONATHAN SEWELL, ESQ.,
Quebec.

The Chief Justiceship of Upper Canada was given to Wm. Osgoode an English lawyer; Osgoode Hall, Toronto, was named after him. The following refers to the death of the Honorable Jonathan Sewell, the father of the then Attorney General of Quebec:

ST. JOHN, N. B., 27th September, 1796.

MY DEAR SIR,—

In the absence of our friend, Mr. Chipman, I consider it a duty incumbent on me to inform you of the melancholy event which has taken place here. Your much respected father had been evidently declining for some time past, and about ten days ago became so weak and debilitated as to be unable to rise from his bed. From that time the tender and indefatigable Dr. Paddock constantly suggested his fears that every day would be his last. He, however, rallied until 8 o'clock last evening, when he departed this life without a struggle or a groan. It was with unutterable concern and regret that Mr. Chipman left this place while your father's situation was so critical, but his departure was unavoidable. Amid the distress which this letter will most naturally excite in the heart of yourself and your brother, it may afford some consolation to know that Mr. Chipman, previous to his departure, left the most particular directions with Dr. Paddock and myself in case the event should happen in his absence. On Friday next, your father will be interred in the vault with Judge Putnam. The pall will be supported by Col. Ludlow, Mr. Hazen, Mr. Leonard, Mr. Wanton, Col. Billop,

and Col. DePeyster. Mrs. Sewell is much exhausted by constant watchings, anxiety and fatigue; her friends are untiring in their endeavors to console her. Mrs. Chipman has been with her all the day. Most sincerely do I condole with you on the loss of my truly valued friend.

Yours faithfully,

EDWARD WINSLOW.

JONATHAN SEWELL, ESQ.,
Attorney General, Quebec.

ST. JOHN, N. B., 9th Oct., 1796.

MY DEAR SONS,—

Before this reaches you, the afflicting news of the death of your affectionate father will have reached you and your brother, Mr. Winslow kindly undertaking the office. Your dear father made his exit on Tuesday, 27th September, and had it pleased Heaven to have lengthened his years, I should still have been happy to have discharged the duties of a wife with affectionate attention, which I trust I have faithfully done through life, and have reason to believe your dear father thought so. I was much afflicted Mr. Chipman could not be at the funeral of your dear father, but he was obliged to meet the commissioners at Passamaquoddy Bay. I must add, in justice to our friends, Dr. Paddock, and Ebenezer Putnam, it was conducted with respect and propriety. They followed as mourners Attorney General Bliss and little Chipman in deep mourning; and what, my sons, will afford you both great satisfaction, and what I have received much for myself, your dear father much wished to be interred with Judge Putnam in his vault. Mrs. Putnam readily complied with his desire; of this he was informed. I am grieved to have your joy dampened at the time of your nuptials; I should be very deficient if I did not mention the particular attention I have received. Mrs. Chipman has been particularly kind to me, Madame Putnam, her son and daughter, Col. and Mrs. DePeyster; each of their families putting themselves in mourning. A letter of thanks to Dr. Paddock and Mr. E. Putnam would not be amiss.

Unalterably your afflicted and affectionate mother,

ESTHER SEWELL (10).

JON. & STEPHEN SEWELL.

The absence of Mr. Chipman referred to in the foregoing letter has reference to his official business

in connection with the Boundary dispute between this Province and the State of Maine, in the United States. The business proved a lucrative one for Ward Chipman. Under the treaty of Amity and Commerce of 1794, between Great Britain and the United States, was the following:

ARTICLE V.

Whereas doubts have arisen what river was the St. Croix of the Treaty of Peace of 1783, to determine which shall be referred to commissioners, to be appointed as follows: One commissioner to be appointed by His Majesty, one by the President of the United States, and the two shall agree on a third. Failing to agree, they shall each propose one person; and, of the two names proposed, one shall be drawn by lot in the presence of the two commissioners. They shall have power to appoint a secretary, and to employ surveyors or other persons as they judge necessary.*

The Commissioner chosen by the British government was Thos. Barclay, of Nova Scotia, the United States Commissioner was Daniel Howell. The counsel on behalf of the Crown was Ward Chipman; on the part of the United States, James Sullivan, Attorney General of Massachusetts. The first meeting of the commissioners was held at Halifax, 30th August, 1796, when the two commissioners agreed on Egbert Benson (11), a Judge of the Supreme Court of New York, for umpire, and Edward Winslow, of New Brunswick, was appointed secretary. The second meeting was at St. Andrews, 4th October, following, when the commissioners, with the agents and secretary, were severally sworn before Robert Pagan, one of the Judges of the Court of Common Pleas for Charlotte County. James Sullivan handed in a statement claiming the Magaguadavic River, as the St. Croix of the treaty, on which Ward Chipman claimed

* The above is not the exact language of Article V., but substantially so. See Appendix I.

the Scoudiac, as the River St. Croix. The agents of both governments asked for a survey of the two rivers—the Scoudiac and the Magaguadavic, as the maps were known to be incorrect, especially the Mitchell map, the one used in 1783 at Paris by the commissioners when peace was concluded between the two countries.

Thomas Millidge (12), of Annapolis, Nova Scotia, was appointed surveyor of the Scoudiac, on the part of the British, and William Chandler, of Massachusetts, on behalf of the American government. The surveyors of the Magaguadavic were Isaac Hedden, of Fredericton, on the part of the Crown, and James Peters on behalf of the United States.

The following correspondence relates to the progress of the commission:

ST. JOHN, N. B., 10 Jan., 1797.

MY DEAR SEWELL,—

The Commissioners are to meet in Boston on the second Tuesday in August, when Mrs. Chipman and little Chip will accompany me there. While on this subject, let me say, that I feel very anxious respecting the duties of my present appointment. I am left alone to conduct the business on the part of the British Government against a host of adversaries, Mr. Sullivan, Attorney General of Massachusetts, the American agent, being assisted by a committee of the council and senate of that state, and the best law counsel. Mr. Sullivan's pay as agent is £1,000 sterling per annum. Everything depends upon demonstrating, which I think may be done, that the River Scoudiac, which we claim as the true St. Croix, was originally so named by DeMonts in 1604. I have sent to England and all parts of the United States for Champlain, etc., etc. Can you not find some works in Canada that you can buy or borrow for me?

Yours faithfully,

WARD CHIPMAN.

JONATHAN SEWELL, ESQ.,
Quebec.

Mr. Chipman was hopeful of success in his contention, as shown by the following letter :

ST. JOHN, N. B., 8th November, 1798.

MY DEAR SEWELL,—

We are now preparing for another jaunt to the United States, the public business I am engaged in having been most unaccountably protracted. I have the satisfaction of finding my conduct most pointedly approved of at home, and I have received assurance His Majesty will not forget me hereafter, and in the meantime my allowance will be increased. I confess I should be very glad to realize the latter part of the promise. The question to be decided by the commissioners is a very simple one; but in the course of investigation and discussion of it, the argument has branched out into a very wide field. I hope that you one day may see it, and have patience and curiosity enough to support you in the perusal of it. I claim no other merit than industry; and when I look back, I wonder how I have been able to collect so much on the subject. I think I have brought the whole to a conclusion in favor of the British Government. * * * *

Yours very faithfully,

WARD CHIPMAN.

JONATHAN SEWELL, ESQ.,
Quebec.

The umpire, Judge Egbert Benson, and Thomas Barclay, the British Commissioner, agreed that the Scoudiac River was the St. Croix of the treaty of 1783. Mr. Benson, in his report to the President of the United States, giving his reasons for his decision in favor of the British claims, stated :

The River St. Croix, contemplated by the Treaty, was undoubtedly that so-called in the grant to Sir William Alexander, and in all subsequent acts of Great Britain, and the St. Croix intended by the grant of 1621 to Alexander could not possibly have been any other than that described by Champlain and Lescarbot, the only authors prior to 1621 who had ever mentioned that river.

Albert Gallatin, a distinguished American statesman, in 1840 bore testimony to the ability of Ward Chipman, and the equity of the decision of the umpire Egbert Benson, as follows :

The British agent demonstrated beyond contradiction that Bone Island (near St. Andrews) ($12\frac{1}{2}$), a few miles from the mouth of the Scoudiac, was the island of the St. Croix, so-called by DeMonts, and on which he had a temporary settlement in 1604-5, and the same which in 1607 was visited by Lescarbot; and also that the river Scoudiac, particularly described by Champlain, who accompanied DeMonts, was the same river, first called by Champlain Etchemin River, and afterwards St. Croix.

The main question submitted to the commissioners having been decided, it became necessary to determine the source of the River St. Croix. There were three points designated; the British agent contended for the source at head of its most western lakes, as designated in the grant to Sir William Alexander. The umpire held the source of the river to be the lowest or eastern lake, which meets the waters of the river. This was agreed on, when the American agent, Mr. Sullivan, proposed to the British agent that they should unite in asking the commissioners to substitute the source or head of the Cheputnaticook, or northern branch, for the place above stated, in favor of which the commissioners had prepared their decision. The evidence on this head is the following letter to Ward Chipman from the British Minister at Washington, who, at the final meeting of the commissioners, was at Providence:

PROVIDENCE, 23rd October, 1798.

SIR,—

I have considered, with attention, your letter of this day, and it appears to me evident that the adoption of the River Cheputnaticook, as a part of the boundary between His Majesty's American Dominions and those of the United States, in preference to a line drawn from the easternmost point of the Scoudiac Lakes, would be attended with considerable advantage. It would give addition of territory to the Province of New Brunswick, together with a greater extent of navigation on St. John's River; and, above all, a larger stretch of natural frontier, calculated to prevent future difficulties and discussion between the two countries. If,

therefore, by assenting to the proposal of the American agent you could bring about the unanimous concurrence of the commissioners in this manner, I am of opinion that you will promote His Majesty's real interests, and I will take the earliest opportunity, with a view to your justification, of expressing these my sentiments on the subject to His Majesty's Secretary of State.

I have the honor, etc.,

ROBERT LISTON.

WARD CHIPMAN, ESQ.

It will be seen by a reference to the map that a due north line drawn from the outlet of the easterly Scou-diac Lake, the point fixed by the umpire as the source of the St. Croix, would have intersected the Chepunaticook Lakes, and thrown into the British territories the small tract of land contained between such a north line and the Chepunaticook. There were within that tract several American grants and settlements; and it was in order that the existing state of things should not be disturbed that the American agent made the proposal. It was gladly accepted by the British agent, because the source of the Chepunaticook river was west of the place first agreed to by the commissioners, and therefore Great Britain would, by the alteration, gain a considerably greater territory.

The Duke of Portland, after learning the decision of the commissioners, expressed his satisfaction in the following letter to Governor Carleton:

The zeal and ability which Mr. Chipman has manifested in supporting His Majesty's pretensions before the commissioners for settling the boundary of New Brunswick has not escaped His Majesty's notice, and I am commanded to direct you to acquaint him with His Majesty's gracious approbation of his meritorious services.

The commission continued for two years and nine months. Mr. Chipman, for his services as agent for the British government, received £960 sterling per annum, and enjoyed at the same time half pay of £91

sterling as Deputy Muster Master General. It would appear that during the early years of the province the practice of law was not very remunerative. Possibly Mr. Chipman may not have been as self seeking as other lawyers, and certainly he was not as successful in money getting as his great abilities deserved. In the following letter he refers, though by no means hopelessly, to his failure in this respect:

ST. JOHN, N. B., 18th July, 1800.

MY DEAR SEWELL,—

The Journal of one year would serve to depict my situation every year since you left, with the exception of the time I was employed in my late public agency. Business has, if possible, decreased, and more frequently than otherwise I find myself in debt at the end of the year. I have indulged a hope that my exertions in my late public employments would entitle me to some further attention from the government, but of this I begin to despair. It is not, however, my disposition to despond; my health is fortunately better than it used to be, having by strict regimen and exercise greatly lessened my gouty complaint, and I shall one of these days, if my prospects are not better, boldly dash to try my fortune in some other line, or some other country. Mrs. Chipman and Chip enjoy their health, the latter has grown a stout boy, now 13 years old, and must soon determine what line of life to pursue. I have a brother-in-law at Salem, Mr. Gray, a merchant in great business, who wishes to take him, and were it not for a reluctance at being separated from him, I should not think it an ineligible way of disposing of him. He is at present all I wish him to be. * * * *

Faithfully yours,

WARD CHIPMAN.

JONATHAN SEWELL, ESQ.,

Attorney General, Quebec.

That he had not entirely failed in accumulating means is apparent from the fact that in 1801 he bought of Wm. Hazen and James White for £500 the site of land east of the Chipman house, extending to Wellington Row, with a frontage on Union Street of 400 feet, extending north to the Mill Pond. It was nearly forty years after before any portion of this

land was utilized, when Peel Street was opened from Union Street, and Carleton Street extended to Peel Street. One of the first erections was the Mechanics' Institute, in 1840 (now the York Theatre), and the last on the south-west corner, the Odd Fellows' Hall (18½). In view of the existing jurisdiction of the Inferior Courts, the following letter is interesting and instructive. It was somewhat bold, even when it was written, to question the propriety of providing simple and inexpensive methods for collecting small debts. It must, however, be remembered that the business of the Supreme Court, not at its best extensive, would be materially affected by the measure, nor can we entirely blame the few struggling lawyers for protesting against that which would somewhat seriously interfere with their means of support:

ST. JOHN, N. B., 10th March, 1802.

DEAR SIR,—

I have been led to make enquiry into the nature of the Act passed at the late session of Legislature, to enlarge the jurisdiction of the Inferior Courts of Common Pleas and for the Summary trial of Actions. How has it happened that within these few years such exertions have been made to enlarge the jurisdiction of Justices of the Inferior Court? Because the leading members of the House of Assembly have been magistrates and judges of these courts, and, like the rest of mankind, are fond of power, and think that justice can in no way be so well administered as by themselves. By their indefatigable perseverance they at length, in the year 1795, obtained an Act extending the jurisdiction of justices to three pounds. This bill has, to the astonishment of the sensible part of the country, passed into a law, extending the jurisdiction of magistrates to five pounds, which is certainly a very serious amount to a great part of the province. It is impossible to account satisfactorily for the support of the judges to this law; it has pained one to hear many respectable characters insinuate, they supposed it was to furnish themselves with an apology for retiring from public business by having but few civil causes before them. It is certain they will have now but little business in the courts. Their successors, I fear,

will have great cause to complain when they find themselves shackled with so curtailed a jurisdiction. The gentlemen of the Bar (14) here, without exception, are dissatisfied and alarmed at the passing of this law. They consider themselves to be entitled to the protection and patronage of the court, but they find their interests in a most important instance abandoned, and a blow given to their profession. Great outcry has been made against the lawyers, but without the smallest foundation as a general charge. There are not, nor have there been, many at any time in the province; and, as for accumulating fortunes, not one of them has obtained more than a very moderate subsistence by his practice; most of them have been, and are, poor; and a number of young gentlemen educated to the Bar in this province have been obliged to quit it for want of business. I had indeed hoped to leave a successor in the same path in the province, but, if the situation of things remains as at present, I shall entertain other designs with regard to his future destination. I see no remedy for the evil unless the Royal disallowance of the Act could be obtained; how far this may be proper or practicable, I know not; if any benefit in this respect could be derived from a respectful remonstrance from the Bar to accompany the Act when transmitted to England, such could be immediately prepared. I am, yours,

WARD CHIPMAN.

THE HON. JONATHAN ODELL.

The anticipated evils were never realized, and none of the profession left the province. Indeed, nearly all obtained positions of distinction. Thomas Wetmore and Charles J. Peters becoming Attorneys General; Ward Chipman, John Murray Bliss and William Botsford, Puisne Judges; and Jonathan Bliss, Chief Justice. It appears from the following letter that Mr. Chipman made some effort to be appointed British Consul at Boston. In this he was unsuccessful, and, although the position would have suited him, it is not improbable that, had he entered diplomatic life, he might have drifted away from the chance of promotion to the Bench. This letter is interesting, as indicating the intense loyalty of the writer, a quality which was

much more strongly, sincerely and commonly possessed by the inhabitants of the province at this time than is generally conceded to-day:

ST. JOHN, N. B., 22nd April, 1805.

MY DEAR SEWELL,—

Business of every kind is at a standstill here, and it is with great difficulty I have been able to jog on with the strictest economy. Could I have bettered my situation by a removal, I should long ere this have done it, and I am still upon the lookout. My friends have urged me very much to return to the States, but I cannot think of it, but in the character of a British subject. Upon the death of the British Consul, at Boston, the other day, I intimated my wishes to our good friend, Mr. Coffin, now in London, to succeed to this office; but the applications will be numerous and too powerful for me to contend with. I therefore place no reliance upon anything from that quarter. Fortunately my health is much mended; it is now two years since I had any, but a slight return, of gout. Mrs. Chipman also enjoys her health, and desires to be remembered with me to Mrs. Sewell and yourself. Our boy, at Harvard, takes his degree next August. The accounts I receive of him are satisfactory. He is very tall and stout, and has a reputation of being the best scholar in his class. Mrs. Chipman's two sisters, Charlotte and Frances, were married last winter, the former to Major Fitzgerald, of the New Brunswick Fencibles, and the latter to Capt. Drury, late of the 29th and now of the 5th Regiment, both young men with good prospects.

Adieu, dear friend,

WARD CHIPMAN.

JONATHAN SEWELL, ESQ.,

Attorney General, Quebec.

Mr. Chipman was in the following year appointed a member of the Provincial Council, an office which, although not lucrative, was at least honorable, and certainly indicative that his claim to a more substantial reward for his services was not forgotten. The letter of the Provincial Secretary, Mr. Odell, referring to this event, indicates that the promotion was regarded with general favor:

FREDERICTON, 21st July, 1806.

DEAR SIR,—

It is with the greatest pleasure that I find in Mr. Windham's letter of the 5th of June to the President a confirmation of your appointment to the Council; I hope you will soon find that there is no foundation for the apprehension which you expressed on this occasion. Your appointment cannot fail to be considered by every member of the Council as a very valuable acquisition to that Board and the public.

Adieu, my dear sir,

JON. ODELL.

WARD CHIPMAN, ESQ.

In the following letter to his friend, Jonathan Sewell, Mr. Chipman, two years later, in an exceedingly despondent mood, refers to his present condition and prospects. His income certainly was small, especially as it apparently covers, not merely his professional earnings, but the profits derived from accumulation and real estate investments. At the same time it should not be forgotten that the amount named would secure much more of the necessities and comforts of life in the province at that day than thirty or forty years later, to say nothing of the present day:

ST. JOHN, N. B., 28th October, 1808.

MY DEAR SEWELL,—

If something does not turn up here for my relief, I see not how I am to remain; business is at a lower ebb than ever. My whole income does not exceed £200 per annum; and this, after thirty-four years at the Bar, is a cruel situation to remain in. It is true, that the salaries of our Judges have lately been increased—the Chief Justice to £700 sterling, and the Puisne Judges to £500 sterling per annum; but there is at present no vacancy, and even if there should be one, little chance of succeeding to it, when men without any professional education, as in the late instance of our friend Winslow, are thrust into it. Upham is now in England, and has been in so ill health that our friend, T. A. Coffin, has advised me to send a memorial, on the contingency of his death, which the President, General Hunter, has very kindly forwarded with recommendatory letters to the Secretary of State; but after

so many disappointments as I have experienced in life, I depend upon nothing, and am ready for almost any change. Upham (15), by the last accounts, had hopes of soon being well enough to come out, but his friends speak less encouragingly; he has, however, gone through so much the last twenty years that there is no knowledge what further he may not bear. Our Chief Justice, you may have heard, had a severe paralytic attack last winter, but has in a great degree recovered; but at his time of life, upwards of 70 years, he must ere long expect another stroke. Winslow is quite a cripple with the gout and Upham absent, our only Judge for common trials is Saunders, who was a half pay captain at the close of the war, and after reading at the Temple a year or two by some interest succeeded Putnam, so that our Bench is now very lame indeed.

Ever yours most faithfully,

WARD CHIPMAN.

HON. JONATHAN SEWELL,
Chief Justice, Quebec.

The vacancies on the Bench presented an opportunity for the more tangible recognition of Mr. Chipman's services, and although unsuccessful in his efforts to secure the vacant seat of the deceased Chief Justice, his claims were recognized to the extent of appointing him a Puisne Judge. His reference to the various political influences employed, in writing to Chief Justice Sewell, is interesting:

ST. JOHN, N. B., 15th August, 1809.

MY DEAR SEWELL,—

Since my last letter to you, great, though not altogether unexpected changes, have taken place in our judicial department. The Chief Justice and Judge Upham died last fall. I immediately started, as you may well suppose, for the vacancy made by the death of the former, by writing our friend Mr. Coffin, enclosing to him my memorial, and also the letters from myself to the Duke of Kent. Upon the death of the Chief Justice, Mr. Bliss, our Attorney General, applied to General Hunter for a recommendation, as I did also, for that vacancy. The General wishes me to succeed, but at the same time did not feel himself justified in neglecting Mr. Bliss's application, and accordingly recommended

us both as well qualified for the office. The result, you know, has been that Mr. Bliss is Chief Justice, and I have succeeded to Judge Upham's vacancy. Bliss wrote, stating all his claims to the late Earl of Liverpool, with whom, as Charles Jenkinson, he had been formerly acquainted. The Earl being dead before his letter arrived, it fell into the hands of his son, who immediately forwarded it to Lord Castlereagh, with a request that Bliss might be appointed. Lady Eleanor Dundas (16), also interested herself in his favor. I am, on the whole, reconciled to my situation, and perhaps ought to be, as it is that for which I had forwarded a memorial during Judge Upham's illness. * * * *

Yours, etc.,

WARD CHIPMAN.

HON. JONATHAN SEWELL,
Chief Justice, Quebec.

In 1809, the Supreme Court of New Brunswick, after the vacancies had been filled, was constituted as follows: Chief Justice, Hon. Jonathan Bliss; Puisne Judges, Hon. John Saunders, Hon. Edward Winslow and Hon. Ward Chipman. The following is a list of the students at law in the office of Ward Chipman, with the date of admission as attorneys and time of death:

Name	Admission as Attorney.	Death
Jonathan Sewell, ...	1788	1839
Thos. Wetmore, ...	1788	1828
Gabriel V. Ludlow, ...	1790	1825
Stephen Sewell, ...	1791	1832
Charles Jeffrey Peters, ...	1794	1848
William Botsford, ...	1795	1864
Thomas Murray, ...	1796	1797
Bartholomew Beardsley, ...	1796	1855
George Leonard, ...	1801	1818
William Franklin Odell, ...	1804	1844
Harris Hatch, ...	1808	1856
Jared Ingersol Chipman, ...	1808	1830
Ward Chipman, Jr., ...	1808	1851

In 1811, Ward Chipman purchased from the Hon. Wm. Hazen the block of land beginning with the lot

now occupied by St. John's Church, Carleton Street, head of Wellington Row; thence along Carleton Street to Coburg Street; thence down Jeffrey's Hill; thence past where now stands St. Paul's Church; thence north-west to Jenny's spring; thence south to the point of departure, in all thirty-four acres, for six hundred pounds. One of the streets opened through this block he named Sewell Street, after his friend the Chief Justice of Quebec. While England was at war with Napoleon, she took seamen, whose allegiance she claimed as British subjects, from merchant vessels of the United States. The American ship of war "President," fired into the "Lille Belt," an English ship of war, while engaged in this practice, and this was followed by a declaration of war on the part of the American government. General Hunter, who at that time was President of the Council and Commander-in-chief, asked the opinion of Ward Chipman as to the prospect of continuance and the probable result of the war, and the best methods to adopt for its termination. There was a very strong party in the United States opposed to the war, which indeed had been declared in the Senate by a majority of but a single vote. The following is Judge Chipman's reply to General Hunter:

It is impossible to form a conjecture with respect to the progress and termination of the war. There are no doubt a great majority, in point of respectability and property, and very considerable in number in the New England States, decidedly adverse to it. The governments of Massachusetts, Connecticut and Rhode Island have refused to put their respective quotas of militia, ordered by Congress, to be drafted for actual service under the command of officers of the United States, and have also declared they shall not be called out. But, notwithstanding this general disposition, in all the States eastward of the Delaware, there is no probability of their making any forcible opposition to the prosecution of the war at present; they are bending all their efforts to effect a change in the government at the elections of President, Vice-presi-

dent and members of the House of Representatives the ensuing autumn. In this view of the subject it may deserve serious consideration whether the war should not, for this year at least, be confined on the part of Great Britain to naval operations, as conflict on the land will tend to irritate, which will help the advocates of the war and defeat all the exertions of the Federal party in the elections. If the Federal ticket should prevail in the northern States generally, and they should be out-voted by a combination of the other States against them upon the question of a continuance of the war, it may be presumed that the northern States would no longer brook submission to such superiority of French influence, and would gladly hearken to such terms with Great Britain as might be proposed with mutual interest, and a permanent reciprocal guarantee of the respective territories of the two countries; and in case of such a disposition, a vigorous prosecution of the war by every mode of annoyance and injury to the southern States would probably effectuate the desired object. But if such should be the course of events, that the States should be unanimous in the prosecution of the war, we may look forward to its being carried on with an inveterate and malignant temper, nourished by French counsel and French aid, that would be satisfied with nothing short of that annihilation of the power of Great Britain, which has been the object of Napoleon, the tyrant of the European continent. In such a case nothing but the most powerful diversions upon the seaboard of the States could save the British provinces from falling into the hands of the enemy. A fleet, capable of carrying destruction into every port, even the best fortified, should menace every part of their extensive sea-coast; and, if it should become necessary, *freedom should be proclaimed and arms supplied to the slaves in the southern States*; the threat of this, as a retaliatory measure, would perhaps be the best security against the invasion of the British provinces.*

In the electoral college, James Madison, Democratic candidate, received 128 votes, and DeWitt Clinton, the Federal candidate, 89 votes, and consequently the war was continued. A meeting of Council was held in the City of St. John, September 17th, 1812, at which were present Major General George Stracey Smyth

* This letter is quoted by Mr. Lawrence in abbreviated form from a long letter to General Hunter.

(17), President and Commander-in-chief, the Hons. Edward Winslow, William Hazen, George Leonard, Christopher Billop and Ward Chipman. The President laid before the Council a letter from Lieut. Bray, commander of His Majesty's brig, "Plumper," to Major Drummond, commanding the 104 Regiment at St. John:

H. M. BRIG "PLUMPER,"
ST. JOHN, Sept. 11th, 1812.

SIR,—

From undoubted information which I have received, and from recent orders which have fallen into my hands from the late captures I have made, I learn that the enemy's cruisers in general direct their prizes to make Mount Desert, where I had the good fortune to re-capture the three British vessels I brought into port, and had I the smallest assistance to take care of these I had in possession, I might have taken seven more; but the small privateers are so numerous that I could not quit my prizes. I was therefore under the painful necessity of allowing the enemy to pass unnoticed. There are at present from fifteen to twenty privateers out of Portland, Salem, and Boston, cruising on the Eastern coast of Nova Scotia, most of whom will be returning the latter end of this month; until then the coast will remain clear for their prizes to get in, as I can hear of no British cruisers in the Bay. I have therefore to request that His Honor the President would allow the "Brunswicker" to accompany His Majesty's brig under my command for a few days off Mount Desert, when, I have no doubt, we should intercept many British vessels getting into the enemy's ports before the Admiral has time to send a sufficient force there, of which I shall apprise him of the necessity without loss of time.

I have the honor to be, yours,

JAMES BRAY.

TO MAJOR DRUMMOND,
104 Regiment, St. John.

The Council resolved, That it be recommended to His Honor to authorize the employment of thirty or more additional hands, not exceeding fifty in the whole, on board the "Brunswicker," to accompany the "Plumper" (18) on the service proposed in the said letter.

Amongst other precautionary measures was the publication of the following notice, which indicates the existence of considerable vigilance and some apprehension on the part of the authorities:

All persons residing within the limits of the City of St. John, and its vicinity, who consider themselves citizens or subjects of the United States, are requested forthwith to report themselves at the office of police held at the Recorder's Office, Prince William Street, where they will receive directions for the future government of their conduct. Every stranger will, upon his arrival, immediately report himself at the same office, and apply there for permission before his departure from the city.

St. John, N. B., 19th July, 1813.

The treaty of peace (19) between Great Britain and the United States was signed at Ghent, on the 24th of December, 1814. Under the terms of this treaty, a commission was to be appointed to "ascertain and determine" the points mentioned in the treaty of 1783 (Paris), between the source of the St. Croix and the intersection of the St. Lawrence by the 45th parallel of latitude. Judge Chipman, from his knowledge and experience gained in the execution of the earlier commission, was obviously a very proper person to act in connection with this new commission. It was therefore with perfect propriety that he forwarded the following memorial to the Department of State:

MEMORIAL OF WARD CHIPMAN.

To the Right Honourable Earl of Bathurst, one of the principal Secretaries of State:

The Memorial of Ward Chipman, a member of His Majesty's Council, and one of the Justices of the Supreme Court of New Brunswick, in North America,

MOST HUMBLY SHOWETH: That in the year 1796 your Memorialist was appointed His Majesty's agent to manage the business on the part of the British government before the commissioners appointed in pursuance of the 5th Article of the Treaty of Amity and Commerce between His Majesty

and the United States of America to decide "what river was truly intended under the name of the St. Croix in the Treaty of Peace of 1783." That in contemplation of the appointment of Commissioners under the fourth and fifth articles of the Treaty of Peace, your Memorialist most humbly begs leave to solicit the favorable attention of your Lordship, in the hope that he may not, on the present occasion, be thought altogether unworthy of being employed in ascertaining and vindicating His Majesty's rights, and that for this purpose your Lordship may, in your great goodness, be pleased to recommend him to the gracious favor of His Royal Highness the Prince Regent.

As in duty bound will ever pray,

WARD CHIPMAN.

St. John, N. B., March 15th, 1815.

The British government appointed Judge Chipman agent, with Thomas Barclay, commissioner. As Mr. Chipman had passed his 60th year, he asked that his son, then in his 28th year, might be associated with him on the commission as agent on behalf of the Crown without any additional expense, which request was granted; and as the duties largely devolved upon the son, the history of the North West Angle properly belongs to the life and times of Ward Chipman the younger. The following voucher in this connection is interesting and suggests a curious and startling contrast as to the cost of travelling to-day and in olden times:

ST. JOHN, N. B., Nov. 10th, 1817.

£32 10s. od.

Received from the Honorable Ward Chipman, His Majesty's agent, under the 4th Article of the Treaty of Ghent, the sum of thirty-two pounds, ten shillings, for passage in my sloop "Duke of Wellington," bound from St. John to New York, and landing him in Boston in September, 1817, there being no direct conveyance to Boston.

NOAH DISBROW.

Mr. Chipman, in 1823, sent a memorial to the British Government, asking to be retired from the Bench on a pension. In this he sets out that—

He has been fully forty-eight years practising law, and is nearly sixty-nine years of age; that his constitution has been greatly enfeebled by repeated attacks of the gout, to which he has been subject from early life, and he has no adequate means of support for himself and his family, but what he is deriving from time to time under His Majesty's government. Under these circumstances he is desirous of resigning the office of Puisne Judge in New Brunswick, the duties of which, in this new and extensive province, requires much bodily strength and exertion for the short remainder of his days which may be allotted to him, as may be thought commensurate with his long and successful services in the various offices he has the honor to hold under His Majesty.

The retirement from the Bench came about in a way most unexpected, for he entered on the higher and more lucrative office of President and Commander-in-Chief. The following notice announced the death of the Governor:

Died at Government House, Fredericton, on the morning of the 27th of March, 1823, after an illness of ten days, His Excellency, Major General George Stracey Smyth, Lieutenant Governor and Commander-in-Chief of New Brunswick. By birth, education and feeling he was an Englishman, and no man ever entertained a more genuine or ardent attachment to the Constitution of his country in church and state. He attained the rank of Major General in 1812, and under His Majesty's commission the same year administered the government of New Brunswick, in the absence of Lieutenant Governor Carleton, and on His Excellency's death (20), 1817, succeeded to the office. General Smyth was an affectionate parent, and was distinguished by the warmth and constancy of his friendship, by his readiness to relieve the indigent, to patronize the deserving, and by his deep concern for the interests of the young and rising generation. In his last moments he was composed and resigned. He not only made those domestic arrangements which the regard to the welfare of his family naturally prompted, but, within two hours of his departure, signed a commission, which was necessary to give dispatch to public business and for proroguing the Legislature, which had just finished the business of the session.

A commission under the Great Seal, signed by the Lieut. Governor, having been issued, in consequence of the severe illness of His Excellency, authorizing and empowering John Saunders, Esq., Chief Justice, Ward Chipman and John Murray Bliss, Esquires, two of the Justices of the Supreme Court, or any two of them, to give the Lieutenant Governor's assent to such bills as have passed the Council and House of Assembly, and then to prorogue the General Assembly, two of the said commissioners, to wit, the Chief Justice and Mr. Justice Chipman, in pursuance of the powers in them vested by the said commission, did by message require the attendance of the House of Assembly in the Council chamber. The House having attended accordingly, the said commission bearing date the 26th inst., was publicly read, and then the said commissioners, in the name of the Lieut. Governor, gave assent to the Bills passed by the House of Assembly and Council. The Chief Justice then declared the General Assembly to be prorogued to the first Wednesday in June next.

The funeral of the Lieutenant Governor, Major General Smyth, was a very large one, and testified the high respect in which he was held by the general public. The funeral procession left Government House for Christ's Church, Fredericton, in the following order: The Sextons, the Field pieces manned by the Royal Artillery and Capt. Minchin's company of Militia Artillery, and the troops in garrison; the whole under the command of Major Mein, of the 74th Regiment, forming the guard of honour and firing party; officers of the Military Department; officers of the Militia; the students and pupils of the College and Collegiate School; the Preceptors; the Wardens and Vestry of the Church; the gentlemen of the Bar; the Magistrates; the High Sheriff and Coroner, with

their staves; the Law and other principal officers of the Crown; officers and members of the House of Assembly; the Hon. Chief Justice Saunders; His Honor the President and Commander-in-Chief; the Band of the 74th Regiment; the Undertaker and assistants; the Clerk of the Church; the Physicians; the Clergy; the gentlemen usher of the Black Rod; then the body of the deceased, with the Hons. Edward J. Jarvis, S. D. Street, John Murray Bliss, William Botsford, Andrew Lockwood, and William Black, as pall bearers, and following as mourners, the Hon. Geo. Shore, Alexander Boyle, M.D.; the Attorney-General; Lieut. Edward Boyd; Aide-de-camp; the household, led horse in mourning; His late Excellency's carriage; a guard of the Grenadiers of the 74th Regiment, with arms reversed and pikes trailed; gentlemen of the town and vicinity. The body was received at the gate of the church yard by the Ecclesiastical Commissary of the Province in surplice, who was the officiating clergyman. After the service in the church, the procession re-formed and proceeded around the church to the south gate, where the body was again met by the officiating clergyman, who proceeded to the vault at the chancel end of the church, the field pieces moving off through the north gate, and forming into line along the front of the river. After the service was ended twenty-one rounds were fired by the Artillery and three volleys from the line. At the time of the Governor's death, he was a widower with a young son, who went afterwards to England. The Hon. George Shore and Alexander Boyle, M.D., the chief mourners, were left his executors. A sermon was preached on the Sunday after the funeral of His Excellency, and published with the title page:

A SERMON

Preached in Christ Church, Fredericton,

April 6th, 1823,

The day after the funeral of His Excellency, Major General
George Stracey Smyth,
Lieutenant Governor and Commander-in-Chief.
of the
Province of New Brunswick.

"Mark the perfect man and behold the upright;
for the end of that man is peace." Psalms xxxvii, 37.

By the

Rev. James Somerville (21), A. M.,
Chaplain of the Garrison, and Professor in the College,
Fredericton.

Printed by George K. Lugin, King's Printer.

A meeting of Council was held at Fredericton, April 1, 1823; there were present Chief Justice Saunders, John Murray Bliss, Ward Chipman, Samuel D. Street, Anthony Lockwood and George Shore. A letter was read from the Hon. George Leonard, senior member of Council:

SUSSEX VALE, Kings County,

SIR,—

March 28, 1823.

I had the honour to receive your letter this day by Mr. Jouett. I very much lament the death of His Excellency, the Lieut. Governor, and I hasten to inform you that my age and infirmities render it impossible to take upon me the administration of the government. I therefore hope that a more competent member will fill my place.

I have the honour, etc.,

GEO. LEONARD (22).

WILLIAM F. ODELL, Esq.

Provincial Secretary.

The next member of the Council in seniority to Mr. Leonard was Mr. Billop, who wrote as follows:

SIR,—

ST. JOHN, 30th March, 1823.

Your communication of the 27th was presented to me last evening by Mr. Jouett, announcing the lamented decease of His Excellency, the Lieut. Governor, and it appearing the

Hon. Mr. Leonard has, on account of age and infirmities, declined to take upon him the administration of the government, the same consequently devolves upon me, as the next in succession on the list of councillors; I therefore request a meeting of the Council at St. John as early as practicable, that the necessary oaths may be administered, not finding it convenient to repair to Fredericton at present.

Yours,

WILLIAM ODELL, ESQ.,

CHRISTOPHER BILLOPP.

Provincial Secretary.

The Council, on receipt of the letter from Mr. Billop decided, as the King's instructions required the person to administer the Government, should be sworn in at Fredericton, and the exigencies of the Government admitting of no delay, that the next member in succession on the list of Councillors be admitted to the administration of the Government. Whereupon Ward Chipman, being the next in succession, and being present, took the usual and requisite oaths, and assumed the administration of the Government. This was followed by a protest from Christopher Billopp, which is as follows:

SIR,—

ST. JOHN, 10th April, 1823.

Mr. Secretary Odell has transmitted to me an extract of the minutes of Council of the 1st inst., by which it appears that such arrangements have been adopted by the Provincial Government as are at variance with the Colonial Constitution, subversive of my rights and privileges, and endangering that of the respective members of Council generally. I therefore deem it my duty to acquaint you that in those arrangements I cannot acquiesce.

I am, sir, etc.,

HON. WARD CHIPMAN.

CHRISTOPHER BILLOPP.

The following is the reply of Mr. Chipman:

SIR,—

ST. JOHN, 11th April, 1823.

I have to acknowledge the receipt of your letter of the 10th inst., and at the same time to inform you that the proceedings of His Majesty's Council therein referred to, and which

were unanimously adopted, have been transmitted to His Majesty's Principal Secretary of State for Colonial affairs, to be laid before His Majesty, and that as soon as the signification of His Majesty's Royal will and pleasure shall be received thereon, the same shall, without delay, be communicated to you. That I shall in the meantime diligently persevere in the discharge of the important duties of the situation, in which I have been placed as administrator of the government of the province, in pursuance of His Majesty's Royal commission and instructions, to the best of my skill and understanding, agreeable to the solemn obligations I am under.

I have the honour, etc.,

WARD CHIPMAN.

HON. CHRISTOPHER BILLOPP.

The protest of Mr. Billopp was followed by the following:

PROCLAMATION.

By the Honorable Christopher Billopp, Esquire,
 Administrator of the Government, and
 [L. S.] Commander-in-Chief of the Province of
 New Brunswick, &c., &c., &c.

CHRISTOPHER BILLOP,

A PROCLAMATION.

Whereas, By the decease of the Lieutenant Governor of this Province, and the Hon. George Leonard, Esquire, the senior member of His Majesty's Council residing within the same, declining from age and infirmity to assume the administration of the government thereof, the same thereby of right devolving on me, as the next senior members of His Majesty's Council, by virtue of the Royal instructions in that behalf.

All magistrates, public officers, and other persons whom it may concern, will take due notice thereof, and govern themselves accordingly.

Given under my hand and Seal at the City of Saint John, this seventh day of April, in the year of our Lord one thousand eight hundred and twenty-three.

By Command.

Judge Chipman, however, was not prepared to abandon his claims, or in any way to permit the action

of the Council and himself to be questioned. He accordingly forwarded, and caused to be published, the following notice:

To the Printer and Publisher of the Courier:

You are hereby forewarned against re-printing in the *Courier* the anonymous publication called A *Proclamation*, which appeared in the *Star* of the 22nd instant, or inserting in your paper any publication purporting to be an act of the Executive Government of this Province, not authorized by previous publication in the *Royal Gazette*, printed at Fredericton, and the official signature of the Secretary of the Province thereto, upon the pain and peril that may fall thereon.

Given under my hand this twenty-third day of April, 1823.

WARD CHIPMAN, President,
Commander-in-Chief.

The British Government, while acknowledging the right of Christopher Billopp (23) as senior Councillor to the office of President and Commander-in-Chief, on the death of the late Governor, declined to interfere with the action of the Council in swearing in Hon. Ward Chipman as President and Commander-in-Chief.

The only session of the Legislature, at which Judge Chipman presided as President of the Council, was held in January, 1824, and must, at its inception, have afforded him peculiar gratification, not merely from the fact of his occupying so distinguished a position, but in consequence of his talented son being selected as Speaker of the Assembly:

The Journal of the House supplies us with the following report of the transactions on the opening of the Legislature:

COUNCIL CHAMBER, 21st January, 1824.

The President came to the Council Chamber, and commanded the attendance of the House of Assembly, who attended accordingly, when the Hon. Chief Justice Saunders, by

command of His Honor, the President, directed the House to return and elect a Speaker, and to present the person so chosen to His Honor, the President, immediately.

The House accordingly returned to the Council Chamber, with their Speaker elect, Ward Chipman, Jun., who addressed the President:

May it please your Honour,—

The House of Assembly, in obedience to your Honour's command, and in the exercise of their undoubted right, have proceeded to the choice of a Speaker, and now humbly attend your Honour to present me as the person chosen. Sensible of my own inexperience and inadequacy to discharge the duties of this high office, I trust that your Honour will be pleased to disapprove of their choice, and command them to elect a more fit person.

Whereupon the Hon. Mr. Chief Justice Saunders spoke as follows:

WARD CHIPMAN, ESQUIRE,—

I am commanded by His Honour, the President, to acquaint you that he hath so good an opinion of your integrity, diligence and sufficiency, for executing the important office into which you are elected, that His Honour is perfectly satisfied with the choice which the House of Assembly have made, and doth allow and confirm you as their Speaker.

His Honor the President then opened the Legislature with the following speech:

Gentleman of the Council and Gentlemen of the Assembly:

It was my intention to meet you in General Assembly at an early period after the close of the last session for the purpose of supplying and correcting some defects occasioned by the haste in which some of the Acts of that session were passed, in consequence of the alarming illness so immediately succeeded by the sudden and lamented death of His Excellency, the late lamented Governor. But upon further consideration and advice, it was concurred that the calling you together at a busy season of the year, so soon after the labours of a long session, would be attended with greater inconvenience

than would be compensated by any benefit to be derived. I also entertained the hope of the speedy arrival of a successor to the late Lieutenant Governor; and although I deeply regret my disappointment, I am happy to have it in my power to congratulate you upon the appointment of Major General, Sir Howard Douglas, an officer whose character and talents may be justly considered as an earnest of the most essential benefit to be derived from his administration by this rising colony.

It was, however, decreed by an all wise Providence that Judge Chipman should enjoy his honours and the pardonable pride of a fond father but for a brief period. On the ninth of February following the opening of the House, and after a brief illness, President Chipman died. That his death was considered a public calamity, as well as a cause of deep and sincere sorrow to a large circle of loving relatives and friends, there can be no doubt. The following extracts from the local press, evidently written with care and feeling, give some idea, faint though it may be, of the sentiments pervading the community on the occasion:

It is with feelings of the deepest concern that we have to apprise our readers of the lamented death of that distinguished individual who has lately been administering the government of this Province, the Honourable Ward Chipman.

This melancholy event took place at Fredericton about 3 o'clock on Monday last, after an illness of only a few days, brought on, we fear, by the intense application which he has been compelled to bestow upon public affairs. As a member of society, a friend, and a man, his loss will be alike deplored. In him the Province has lost a father, and society one of its brightest ornaments; and while through a long life his private character has justly entitled him to the appellation of *good*, his public conduct and brilliant talents compel us to add that of *great*.

The above extract appeared in the *St. John City Gazette*. And further:

The emblems of mourning, which surrounded our columns, will announce the sad intelligence of the death of the Honour-

able Ward Chipman. He was the last survivor of those who held official appointments under the Crown at the erection of this Province. In the domestic relations of life he was deservedly esteemed by those to whom he was best known. As a companion and friend, he was distinguished by the urbanity of his manners and by a remarkable share of vivacity, which he retained even to the last period of his life. In his capacity of a Judge of the Supreme Court, he was distinguished by the extent and accuracy of his legal information, and by the faithful discharge of the various and important duties which that situation involves. In the high and important station of President and Commander-in-Chief, he has been advantageously known to the inhabitants of this Province for nearly twelve months. No sooner was the struggle of competition which arose on his elevation to the Presidency brought to a close than the tongue, even of malevolence, was silenced, and his very enemies have never ventured to question the utility or expediency of any one act of his administration. With regret we have seen it stated, that intense application to public business, during the present session of the Legislature, is supposed to have brought on the illness which has deprived the Province of his valuable services. The deep interest he took in the education of the youth could not fail to be marked by those who had opportunities of witnessing. As a director of the grammar school in this city, as a governor of the Madras institutions in this Province, he manifested unwearied assiduity in promoting the best interests of those useful establishments. On the whole, we consider him as having been a real benefactor to the Province, and, that by his death, we have sustained a great public loss. On the news reaching the city, the bell of Trinity Church was tolled during the remainder of the day. On Sunday the pulpits of Trinity and the Scotch Church were hung in black. The flag of Fort Howe was half mast.

The above quotation is taken from the *St. John Star* of February 17, 1824.

The funeral took place at Fredericton, the following being the order of the procession: The Sexton; Troops in Garrison; Field Pieces, manned by the Royal Artillery and Captain Minchin's company of Militia Artillery, the whole under the command of

Major McNair, of the 52nd Regiment; officers of the Military departments and Militia; students and pupils of the College and Collegiate Schools; President and Preceptors of College; Wardens and Vestry of Christ Church; gentlemen of the Bar; Magistrates; Sheriff and Coroner, with staves; officers of the House of Assembly; members of the House of Assembly; officers of the Government; the Honorable the Judges; the Honorable the members of the Council; Physicians; Clergy; and usher of the Black Rod; the body of the deceased, with the following pall-bearers—William F. Odell, S. D. Street, John Robinson, Col. Rowan, Capt. Shore, Judge Bliss; the chief mourners, servants of the deceased; carriages of the deceased; guard of honor, with arms reversed. On the opening of navigation, the body was brought to St. John and placed in the Old Burying Ground, whence it was subsequently removed to the Church of England Cemetery, fronting on Courtenay Bay, and afterwards to the Chipman-Hazen grounds in the Rural Cemetery (now Fernhill Cemetery), where Hazens of four generations lie buried. The following is the inscription on the tomb; it was written in 1826 by the younger Ward Chipman:

This Monument
is erected over the remains of
THE HONORABLE WARD CHIPMAN, ESQUIRE,
who was born
in the Province of Massachusetts Bay,
on the 30th July, 1754,
and died
at Fredericton, in this Province,
on the 9th February, 1824.
He was a Graduate of Harvard University,
and educated to the Profession of the Law.
Retaining his loyalty to his Sovereign,
he was obliged to abandon his native land
on the evacuation of Boston in the year 1776.

Having repaired to England the Royal Bounty bestowed
 on him a Pension in common with a long list
 of his suffering fellow countrymen. But a state
 of inactivity being illsuited to his ardent mind,
 in less than a year he relinquished his Pension,
 and rejoined the King's Troops at New York,
 where he was employed in a military Department,
 and in the practice of the Court of Admiralty
 until the peace of 1783.

On the first erection of this Province in 1784,
 he was appointed Solicitor General,
 and continually afterwards
 bore a conspicuous and most useful part in its affairs,
 as an Advocate of the Bar, a Member of the House of
 Assembly,
 a Member of His Majesty's Council, a Judge of the Supreme
 Court,
 and Agent on the part of His Majesty before the several
 Commissions
 for settling disputed points of Boundary with the United
 States.
 until he closed his mortal career,
 while administering the Government of the Provinces,
 as President and Commander in Chief
 during a vacancy in the office of Lieutenant Governor.
 Distinguished during the whole of his varied and active life
 for superior abilities and unweariable zeal,
 for genuine integrity,
 and singular humanity and benevolence,
 his loss was universally deplored:
 and this frail tribute from his nearest connexions,
 affords but a feeble expression
 of the affectionate respect with which they cherish
 the memory of his Virtues.

NOTES

(1) The following letter, from Jonathan Sewell, then residing at Bristol, England, to Ward Chipman, then in New York, is interesting, as showing the intimacy between the two, and Mr. Sewell's anxiety

as to the future of his son, and his latent affection for the land of his birth:

TRINITY STREET,

DEAR CHIP,—

Bristol, 15th March, 1780.

Till you become a father, my dear Chipman, you will never realize the pleasure I receive from the account of your situation at Mrs. Ogilvie's—lodging and boarding, with a servant and house at £180 per annum, and your income £300 per annum. How much better is this than to rust in England with about £100? Oh, Chipman, if I never see you again, you may possibly see my dear boys; they are fine boys, Chip, and may be fatherless; that's the only question that ever unmans me. Let wars and rebellion continue, let my little all go, let me be banished from my native country, which heaven knows I dearly love, give me my life till my dear boys are upon their own legs, and take it, heaven, if you please. Now, Chip, I am going to be a little selfish. You know the Israelites hankered after the leeks and onions of Egypt—their native land—so do we Americans after the nuts, cranberries and apples of America. Cannot you next autumn send me two or three barrels of Newton pippins, large and sound, a few of our American walnuts, commonly called "Shag-Barks;" could not Coleman get you a few? and a few cranberries. If you can send any or all of these, more or less, you have no conception how grateful it would be. If Ned Winslow is in the land of the living, pray present him my best wishes for his success, health and happiness. My own spirits have never failed me. I doubt not I shall yet see good days; according to the days wherein I have seen evil. Leonard, Blowers, Putnam, Murray, etc., have arrived in England. Adieu,

Your faithful friend,

WARD CHIPMAN, ESQ.,
New York.

JONATHAN SEWELL.

(2) Col. Fox, afterwards Brigadier-General Henry E. Fox, a warm personal friend of Edward Winslow, and a brother of the great orator and statesman, Charles James Fox. He was in command in Nova Scotia in 1783, and in 1784 declined the governorship of the Province of New Brunswick.

(3) Col. William Tyng was born in Boston in 1737; through the war he was in the Commissariat Department, and at its close he came to St. John as Commissary and Agent for the Loyalists, and drew ten city lots on Princess Street, being the block of land extending from Prince William Street to German Street, on which the Union Club, Savings Bank and Pugsley's Building now stand. He was commissioned a Colonel by General Gage, and was for a short time a resident at Gagetown, and Sheriff of Queens County. Possibly he may have given the name to the shiretown of Queens, out of regard to his friend, General Gage. Princess Street at one time was called Tyng Street. In 1793 Col. Tyng returned to Massachusetts. He died at Portland, Maine, in 1807, aged 70 years, and was buried there from St. Paul's Church. His widow, whom he married in 1769, died in 1831.

(4) Hon. William Hazen left Newbury, Massachusetts, in 1775 for Portland Point, St. John, to join his partners in business, James Simonds and James White. Through the Revolutionary contest, none were more loyal to the Crown. Consequent on attacks by the enemy, Mr. Hazen crossed the Bay of Fundy in a canoe with two Indians to meet the government at Halifax. Owing to his representations, a garrison was established on Fort Howe. At the organization of New Brunswick as a Province, he was called to His Majesty's Council. He died at Portland, N. B., 1814, aged 75 years.

Mrs. Hazen died in 1823, in her 75th year. Their son, Robert, a Major in the 60th Regiment, died at the old homestead, 1813, aged 38 years. His wife was a daughter of Munson Jarvis. Robert F. Hazen, who died in 1874, was a son. William, in his early manhood, lived at Fredericton; his wife was a

daughter of Colonel John Murray, who died in 1816, aged 48 years. The Honourable Robert L. Hazen and Charles Hazen were sons. The second marriage at Portland Point was on New Year's day, 1797, of Thomas Murray, of the Fredericton Bar, to Sarah Hazen; the officiating clergyman was the Rev. Dr. Byles. Their wedded life was short, as Thomas Murray died May 3rd, 1797, in his 23rd year. In 1802, Mrs. Murray was married by the Rev. Dr. Byles to William Botsford, a member of the St. John Bar. There was a double marriage at Portland Point by the rector of Trinity on December 27th, 1804, when Major Fitzgerald was married to Charlotte, and Lieutenant Charles Drury to Frances Amelia Hazen.

(5) Capt. John McGill was an officer in the Queen's Rangers. At the close of the war he came to New Brunswick; subsequently he removed to Upper Canada, and became a man of note; he was a member of the Legislative Council of that Province, and died at Toronto in 1834, aged 83 years.

(6) William Davidson, in 1764, came to the Miramichi River from Scotland, and shortly after was joined by John Cort from Aberdeen. They obtained a large grant of land on the South West Branch of the Miramichi, and engaged in the shipment of square timber to Europe.

(7) John Black was a native of Aberdeen, Scotland. Shortly after the settlement of St. John, he arrived as agent of the British government for the shipment of masts for the navy. In 1808 he removed to Halifax, Nova Scotia, leaving the New Brunswick branch of his business with his brother, William Black. The vessels for carrying the masts arrived spring and fall, making two voyages each year. They were called the "Mast Ships," Merchants visiting the Old Country took passage in them. When Governor

Thomas Carleton and family left for England they went in a "Mast Ship." Besides the mast agency, the firm did a large general trade. A brother, Alexander Black, a merchant of Fredericton, died in 1798, aged 32 years. In 1813, John Black was appointed to a seat in His Majesty's Council in Nova Scotia, and in 1823, while on a visit to Aberdeen, he died there. His brother, William, in 1818, was appointed to a seat in His Majesty's Council in New Brunswick, and in 1829 became President and Commander-in-Chief on the departure of Sir Howard Douglas for the Netherlands on the North West Boundary matter. Mr. Black died at Fredericton in 1866, aged 97 years.

(7½) Benjamin Marston was born in Salem, Massachusetts, and in 1749 graduated at Harvard. He was a merchant at Marblehead, and a staunch Loyalist. On the evacuation of Boston in 1776, he went to Halifax, Nova Scotia. At the organization of New Brunswick in 1784, he was appointed Sheriff of Northumberland County; in 1792 he was in London, when he went on the mission to the coast of Africa, as detailed in his letter to Ward Chipman. Shortly after his arrival he was stricken with fever, and died August 10, 1792. His history from the beginning of the Revolution till his death was a somewhat checkered and disappointing one.

(8) William Smith became Chief Justice of New York in 1780, on the death of Chief Justice Horsmandon. He was for a time the chief confidential adviser of Sir Henry Clinton. On the conclusion of peace he went to England, and shortly after was appointed Chief Justice of Quebec. Judge Jones, in his History of New York, has stated, that the Chief Justice was not very friendly to the Loyalists. He died at Quebec, December 6th, 1793, aged 65 years. The Duke of Kent, the father of her late Majesty, Queen Victoria,

was among those who attended the funeral. In 1796 Jonathan Sewell, Jr., married a daughter of the late Chief Justice, and with her received a large fortune. Jonathan Sewell, it will be remembered, became Chief Justice of Quebec.

(9) The first member of the Maritime Bar to obtain a judgeship in Upper Canada was Thomas Cochrane. At the time of his appointment, in 1803, he was Chief Justice of Prince Edward Island, and not more than thirty years old. He held the office of Judge of Upper Canada a little over a year. He was proceeding down Lake Ontario in the schooner "Speedy," chartered to convey the Court from York to the place appointed for holding the session. The date was October 7th, 1804, and the weather was stormy. In the dead of night the vessel went down, buried in the waters of Lake Ontario. Judge Cochrane, Solicitor-General Gray, the Indian prisoner, two interpreters and several witnesses, in all thirty-nine persons, were swallowed up in the deep, and no trace of them was ever after found. Judge Cochrane was a son of the Honourable Thomas Cochrane, Speaker of the Nova Scotia Assembly from 1784 to 1788; his mother was a sister of the Rt. Rev. John Inglis, third Bishop of Nova Scotia.

(10) Mrs. Sewell was a daughter of Edmund Quincy, and a sister of the wife of John Hancock, the first of the signers of the Declaration of Independence. In her younger days she was distinguished for her beauty, vivacity and spirit. After the death of her husband she removed to Montreal and lived with her son Stephen until her death in 1810, receiving annually from the British government £100 sterling. The evening of her life was brightened by witnessing the great success of her sons, the elder, Jonathan, at her death, being Chief Justice of Quebec.

(11) Egbert Benson was a distinguished member of the New York Bar, one of the three commissioners appointed by the American Government to assist the commissioners chosen by Sir Guy Carleton in superintending the embarkation of the Loyalists at New York. Judge Benson died in 1833, aged 87 years.

(12) Thomas Millidge, before the Revolution, was Surveyor-General of New Jersey. During the war he was Major of the First Battalion of New Jersey Volunteers. He settled in the Annapolis Valley, Nova Scotia, and represented the county in the Legislature of that Province. He died in 1816, aged 81 years. Thomas Millidge, a prominent merchant of St. John, who died in 1838, was one of his sons. A daughter was the mother of the Rev. Canon Walker, who was for nearly half a century rector of Hampton, Kings County, New Brunswick.

(12½) This island is now known as Docias Island. It was probably called after Governor Doucet, and the spelling corrupted. It is, however, only fair to refer to another supposed origin of the name, to the effect, that the island was called "Docias" by a party of pic-nickers, after one of their number, Theodosia Milbury, a very pretty girl, daughter of a gentleman residing at St. Stephen.

(13) At a meeting of the Maine Historical Society in 1879, Mr. Washburn read a paper on the North West Boundary, in which he paid a high compliment to Ward Chipman, the British agent. He said: "The Commissioners having agreed on the Scoudiac as the St. Croix; our bad fortune did not stop here, for after deciding that its source was at the lower or easternmost end of the Scoudiac Lakes, a change was made by adopting the source of the Northern or Chepunaticook. The bad luck in this must be largely chargeable to the ignorance of the American Commissioners.

The British agent appears to have had it all his own way before the commissioners."

(13½) All the real estate purchased by Ward Chipman from William Hazen and others has now (1906) been greatly improved, and is largely covered with buildings.

(14) The Bar of New Brunswick, in 1802, had the following members, viz.: St. John—Jonathan Bliss, Ward Chipman, Thomas Wetmore, William Botsford, Charles J. Peters, George Leonard, Jr.; Fredericton—S. Denny Street, John Murray Bliss; Westmorland—Amos Botsford; St. Andrews—Joseph Garnett.

(15) Judge Upham died in England, two days after the letter from Chipman to Sewell was written, and weeks before it would reach England; and two weeks later Chief Justice Ludlow was also dead.

(16) In 1786-7 the Commissioners for settling the claims of the Loyalists spent the winter in St. John, which was thereby rendered a season of great gaiety, with assemblies, private parties, and music. In these entertainments Lady Eleanor Dundas, who was one of the party, largely participated. Col. Thomas Dundas was one of the Commissioners appointed to adjust these claims.

(17) Lieutenant General Martin Hunter and family left St. John for England via Halifax, Sunday, August 6, 1812, in the merchant fleet under convoy of His Majesty's ships "Spartan," "Maidstone," "Indian" and "Plumper." Between 1808 and 1812, General Hunter was three times President and Commander-in-Chief of the Province. He died in England in 1847, in his 90th year.

(18) On the morning of December 5th, 1812, the "Plumper," Lieut. Bray, coming from Halifax to St. John, was caught in a snowstorm in the Bay of Fundy

and became a total wreck at or near Dipper Harbor, in the City and County of St. John. The "Plumper" had on board, for the Commissariat at St. John, £70,000 in specie. Her commander, Lieut. Bray, with twenty-six of the passengers, two of whom were ladies, were lost. Mid-shipman Hall, with twenty-eight of the crew, were saved. Lieutenant Bray had been twenty-four years in His Majesty's service. The following advertisement refers to the circumstances of the wreck:

FOR SALE AT PUBLIC AUCTION BY CROOKSHANK AND
JOHNSTON.

The remaining part of the wreck of His Majesty's brig "Plumper," now lying under water at Dipper Harbour, with guns, rigging, etc., and the unrecovered part of £70,000.

R. EDWARDS,

Dep. Commissary General.

St. John, N. B.,
6th July, 1815.

(19) The Treaty of Peace was not known at New York until forty-seven days after the signing of the same. In the interim, on January 13, 1815, was fought the battle of New Orleans, in which, on the part of the British, 700 were killed, 1,400 wounded, and 500 taken prisoners. The British general, Sir Edward Packenham, brother-in-law of the Duke of Wellington, was killed.

(20) In 1816, an act was passed confirming a negotiation entered into by William Botsford, James Fraser and John Allen, Esquires, a committee of the House of Assembly of one part and Colonel Harris William Hailes, the agent of His Excellency, Lieut. enant-Governor Thomas Carleton, then in England, and the Governor and Trustees of the College of New Brunswick of the other part, for the purchase of the Mansion House, known by the name of Government

House, with the outhouses and lands adjacent, containing about fifty acres, and at that time in the possession of His Excellency, Major General George Stracey Smyth, the President and Commander-in-Chief of the Province, as a residence for the Lieutenant-Governor and Commander-in-Chief. As a portion of the land was held by Thomas Carleton from the College, its title was extinguished upon the payment to the College of one hundred and fifty pounds, Thomas Carleton receiving the sum of £3,500. The latter died at Ramsgate, England, February 2, 1817, aged 81 years, and was buried at Nately Scures (St. Swithun's) Church, in Hants.

(21) The Rev. James Somerville, M. A., came to New Brunswick in 1811; he was Professor and President in the College, Chaplain, and also a Missionary at Douglas, in the County of York.

(22) In the old burial ground at Sussex, Kings County, is a monument, on which is inscribed the following: "In humble religious hope, the remains of the Honorable George Leonard, thirty-six years a member of His Majesty's Council for the Province of New Brunswick, and those of his wife are here deposited. This exemplary couple were natives of Massachusetts. Mr. Leonard was descended from an ancient English family, born at Plymouth, New England, 28th November, 1742, and married to his faithful consort 14th October, 1765. He was a man of sound integrity, prompt to decide, and resolute to act, warm and constant in his attachment, correct in deportment, and generous in design. Mrs. Leonard was born in Boston, New England, 18th November, 1745; quick of apprehension, and cheerful without levity, patient under trials, kind and charitable without parade. They came to this country A. D. 1783; she departed this life the 5th day of February, 1826,

and was followed by him the first day of April next following."

Henry Leonard, the third son of Hon. George Leonard, was born September 10, 1773, and died November 11, 1849, aged 77 years.

(23) Christopher Billopp, like George Leonard, had not for years attended any meetings of Council, and at the death of Governor Smyth was in his 86th year. In the old graveyard, St. John, upon his tomb is the following inscription: "Sacred to the memory of Honorable Christopher Billopp, a member of His Majesty's Council in this Province, whose uncompromising loyalty and distinguished exertions as Lieutenant-Colonel in the Royal cause during the American rebellion obliged him, at the termination of that contest, to abandon his hereditary property on Staten Island, and retire with his family to this colony, where he has since resided universally respected. He died on the 28th of March, 1827, in the ninetieth year of his age. His wife died the 21st of January, 1802, aged 48 years. One of his daughters married the Honorable William Black; Dr. William Bayard, of the City of St. John, now (1906) in his ninety-fourth year, is a grandson.

(24) The reference to the "Butler Fine" on a previous page is explained by a letter from Governor Carleton to Lord Sydney, Secretary of State, of date October 13, 1786, to be found in Canadian Archives, of 1895, p. 11, relating to New Brunswick. Butler was reported for attempting to defraud the revenue, he was arrested, tried, convicted, and sentenced to pay a fine of £500, and suffer three months imprisonment. He broke gaol but was retaken, and at the date of the letter was in close custody. Out of the fund arising from this fine it was proposed to make the payment.

CHAPTER X.

HON. JOHN MURRAY BLISS.

The Honorable Daniel Bliss, father of John Murray Bliss, was born at Concord in 1744, and graduated at Harvard in 1760. In 1775 he married Isabella, daughter of Colonel John Murray, of Rutland. He settled on the River St. John, above the Oromocto, and named his place "Belmont." The following incidents in the life of Daniel Bliss are told by his son, John Murray Bliss:

"My father, the late Honorable Daniel Bliss, received a collegiate education, and became a member of the Bar in the Province of Massachusetts Bay, and at the commencement of hostilities was in high practice, but steadfast in his attachment to his King, he abandoned his all, and retired with his family to Boston, from thence, when it was evacuated by the British troops, he went to Quebec, with letters of recommendation from General Gage to Sir Guy Carleton. A few weeks after his arrival there, Quebec was besieged by the Rebel forces, and he, like many other gentlemen, enrolled himself and did duty as private sentinel through the whole of the most severe winter. Upon the raising of the siege he was appointed Assistant Commissary General, and was with General Burgoyne's army until within a few days of its surrender, when he was sent back under a severe attack of fever and ague. Immediately upon his restoration to health he was put in charge of the whole commissariat, from the Niagara to the most westerly British post, in which situation he continued until the conclusion of the American war. On his appointment by His Majesty, one of the first councillors, he

repaired to New Brunswick, where he continued in the discharge of his duties as such and as presiding justice of the Common Pleas in the County of Sunbury until his death."

Hon. Daniel Bliss died at Belmont in 1806, aged 65 years; his wife died at St. John, 1807, aged 65 years. John Murray Bliss entered the law office of Jonathan Sewell, Jr., and when the latter left New Brunswick for Quebec, Mr. Bliss completed his studies in the office of Attorney-General Bliss. On his admission to the Bar he moved to Fredericton, where he early attained distinction in his profession.

After the opening of the Province Hall, or House of Assembly, in 1802, Mr. Bliss took the building vacated, and, till then, used as the House of Assembly, for his dwelling and office.

As the New Brunswick regiment (2), afterwards known as 104th, at this time (1806) had attained some celebrity, it may be interesting to give the names of the officers of that regiment: Colonel, Major-General Martin Hunter; Lieut. Col. George Johnston; Major, Charles McCarty; Captains, J. T. Fitzgerald, R. Moodie, T. Hunter, T. Christian, G. Gerau, A. Sutherland, H. W. Hailes, D. Campbell and R. Leonard; Lieutenants, A. G. Armstrong, C. McDonald, William B. Phair, George Shore, J. G. Blake, E. Fennell, Barton Wallop, C. D. Rankin, W. B. Bradley and W. Procter; Ensigns, E. Holland, H. Carmichael, J. H. Roache, A. Rainsford, G. Jopling, H. Lodge, H. Drysdale and J. Jenkins. Staff — Henry Carmichael, Paymaster; James Hickes, Quarter Master; Frederick Thompson, Surgeon; Thomas Emerson, Assistant Surgeon. Major-General Hunter gave a ball in the Province Hall, February 14th, 1806, to commemorate the great victory of Trafalgar, gained October 21st, 1805, when

Nelson fell, mortally wounded. Although this event may not be intimately connected with the circumstances of the life of John Murray Bliss, yet it is interesting from an historical standpoint, as it discloses somewhat the conditions of society then existing in the Province. From a notice in one of the newspapers of the time, it was stated: "All the rooms in the building were occupied on the occasion. On one side, between two arches, formed with evergreen and artificial flowers, interspersed with great taste and crowned with handsome imitations of the plumes of the Prince of Wales, was placed an elegant transparent painting of the Nelson Arms, executed by Capt. Rudyerd, of the Royal Engineers, in a masterly manner, supported by the King's colors of the late and present New Brunswick regiments. Between corresponding arches, formed and variegated in the same manner, on the opposite side, was placed another transparency of the Nelson Star and Motto, the four points of the star terminated by the words St. Vincent, Nile, Copenhagen and Trafalgar in succession in golden letters, Trafalgar being the zenith. This was executed by Capt. Campbell, of the New Brunswick Regiment, and was supported by the regimental colours of the corps above mentioned. The floor was also chalked under the direction of Capt. Campbell with appropriate devices, figures and mottoes, and exhibited specimens of finished painting in its various parts. The two ends of the room were decorated with large union colours elegantly festooned, inclosing, in opposite and corresponding situations, two highly finished pictures in rich frames. One hundred and fifty candles, including those which illuminated the arches, gave high lustre and splendid effect to the whole scene.

The company was collected before 9 o'clock, when

the dancing commenced in two sets of 20 couples each, the first led off by the President of the Province, with Mrs. Hunter; the second by Major-General Hunter, with Mrs. Saunders. The dancing continued till 1 o'clock, when the supper-room was opened, to which the company were conducted down the great stair-case in the hall, illuminated by a magnificent chandelier of 60 lights, and resounding with martial music, which continued during supper-time. The decorations of the supper-room were splendid and magnificent, and excited universal surprise and admiration. The supper-tables were inclosed by pillars of the Ionic order, connected by arches, the whole formed with evergreens, enlivened by artificial flowers of different kinds and colours, and lighted by an immense number of lamps, which altogether produced the happiest effect. The upper part of this elegant and fanciful structure was in the form of a hexagon, the centre arch co-extensive with and directly over the oval, which formed the head of the supper-table; around this arch, over which the Union colours were handsomely festooned, letters formed by artificial roses composed the words "GOD SAVE THE KING," so large as to be distinctly visible from the farthest part of the room, and under this inscription, upon the chord of the arch, was placed a strikingly brilliant and beautiful transparent painting of the "Victory" engaged with the French and Spanish Admirals' ships, with their masts falling, and in the act of striking—executed by Lieutenant Shore, of the New Brunswick regiment. This large centre arch was connected by two smaller ones in an oblique direction, with the larger arches on the sides of the room; and a little retired from under these smaller arches conspicuously stood two Grenadiers in full dress and arms, corresponding with two others placed near the

lower corners of the room. The bottom table formed a base to the whole figure in a straight line, under a canopy displayed in immensely large Union colours suspended from the ceiling, and exhibiting the appearance of a superb Turkish tent. As no scenery of this kind had been anticipated, the whole appeared like enchantment, and for a while arrested the attention of the company from the rich profusion of rare and delicious viands and liquors with which the supper tables were covered in the highest style of elegance and taste, ornamented with Chinese temples, pagodas, and other devices of beautiful and novel form. One hundred and thirty-six ladies and gentlemen sat down to supper together, with perfect convenience, among whom were the President and members of His Majesty's Council, the principal officers of Government, Major-Generals Coffin and Armstrong, and a respectable collection of the first characters in the Province, honored by the company of sixty ladies, who formed a climax to the beauty of the scene, and added in no small degree to the festivity and enjoyment of this sumptuous repast. After supper a number of select and appropriate toasts were given, and in the intervals a variety of well-adapted songs sung, among which were "God Save the King," "Rule Britannia," "The Watery God," "The Battle of the Nile," and a song composed for the occasion, which will be sub-joined to this account. About 3 o'clock the dance was resumed and continued in the most animated and exhilarating style till nearly five, when the company broke up, highly gratified with the superb and magnificent celebration of the victory of our great and immortal naval hero, which for splendor, taste and elegance cannot be easily surpassed.

A song written at Fredericton, and sung at General Hunter's ball, given in the Province Hall there on

the 14th February, 1806, in honor of the late victory
of the immortal Nelson:

TO THE MEMORY OF LORD NELSON.

Though envied and hated by Tyrants and Slaves,
Britannia, fair Queen of the Ocean, remains:
Repell'd by her ramparts that float on the waves,
War flies from her borders and want from her plains.
For ages renown'd,
By Victory crown'd,
Surpassed by no other,
One rivals his brother,
And all prove their titles as Lords of the Main.
Lords of the Main? Aye, Lords of the Main,
The Tars of Old England are Lords of the Main.

The Charter descending from heroes of old,
Expands in succession, as ages roll on,
A climax of glory; but ah, can it hold?
Who shall rival the past, now that *Nelson is gone*;
Yet hark, from on high
The Angelic reply.
Your Nelson shall conquer and triumph again.
Each Tar shall inherit
A share of his spirit,
And all prove invincible Lords of the Main.
Lords of the Main? Aye, Lords of the Main,
The Tars of Old England are Lords of the Main.

Wherever your far-dreaded sails are unfurl'd,
The genius of Nelson shall fight by your side,
And teach you again to astonish the world
By deeds unexampled, achievements untried.
Then Britons strike home,
For ages to come
Your Nelson shall conquer and triumph again.
Each Tar shall inherit
A share of his spirit,
And all prove invincible Lords of the Main.
Lords of the Main? Aye, Lords of the Main,
The Tars of Old England are Lords of the Main.

Nor are we alone in the noble career,
 The Soldier partakes of the generous flame;
 To glory he marches, to glory we steer,
 Between us we share the rich harvest of fame.
 Recorded on high,
 Their names never die,
 Whose deeds the renown of their Country sustain.
 The King, then, God bless him,
 The world shall confess him,
 The Lord of those men who are Lords of the Main.
 Lords of the Main? Aye, Lords of the Main.
 The Tars of Old England are Lords of the Main.

On the death of Judge Upham, in 1808, followed by the death of Chief Justice Ludlow a few weeks thereafter, Solicitor-General Chipman was appointed to the Puisne Judgeship, and Attorney-General Bliss to the office of Chief Justice. For the office of Attorney-General there were two applicants, Thomas Wetmore and John Murray Bliss, of whom the former forwarded the following letter and memorial to Lord Castlereagh:

ST. JOHN, N. B., 25th March, 1809.

MY LORD,—

I beg your excuse for the liberty I take in forwarding to your Lordship the enclosed memorial. The subject of it is a business of great importance to me, and prudence dictates that no time should be lost in submitting it to your Lordship's consideration. I have enclosed a duplicate of the memorial to Governor Carleton, now in England, and I think I may, with some confidence, rely upon His Excellency's aid in obtaining for it a favourable reception with your Lordship. If I am right in conjecturing that the gentleman intended to be recommended by President Johnston for the office of Attorney General is Mr. John Murray Bliss, I beg leave to state to your Lordship that I am longer at the Bar than he by three years.

I have the honour, etc.,

THOMAS WETMORE.

LORD CASTLEREAGH.

Secretary of State.

The following is the memorial referred to and signed by Mr. Wetmore:

TO THE RIGHT HONOURABLE LORD CASTLEREAGH,

His Majesty's Principal Secretary of State for the Home Department.

The memorial of Thomas Wetmore, of the Province of New Brunswick, Barrister-at-Law,

HUMBLY SHEWETH:

That the memorialist was in the year 1788 admitted an Attorney and Solicitor of the Supreme Court of the Province, and in the year 1790 admitted a Barrister-at-Law.

That his father and grandfather were ever firm in their loyalty to His Majesty, and attachment to the present establishment, both ecclesiastical and civil, and the memorialist has acquired the reputation of inheriting those principles of his ancestors. That he is now forty-one years of age, and has a family of eight children. That on the decease of the late Chief Justice Ludlow, the memorialist, supposing the vacancy on the Bench would be filled by one of the Crown lawyers, made application to Major General Hunter, the then President and Commander-in-Chief, to be noticed in the disposal of the offices, which would become vacant upon the promotion of Mr. Chipman, the Solicitor General, who held, besides that office, several Provincial appointments. That he was fortunate, soon after, to be informed by the President that he recommended the memorialist to your Lordship, if it should become vacant by the promotion of Mr. Chipman. That upon the arrival of the intelligence of the death of Judge Upham, the memorialist, thinking it probable that the said Crown lawyers would be advanced to the Bench, made application to the President, Lieutenant Colonel Johnston, through Mr. Justice Saunders, now at the head of the Bench, for a recommendation to fill the vacancy that event would produce in the Attorney General's place. That a few days after meeting the President in St. John, the memorialist renewed the application in person, and was advised to write General Hunter, who is at present at Halifax.

I have the honour, etc.,

THOMAS WETMORE.

The office of Attorney-General was given to Thomas Wetmore, and that of Solicitor General to John Murray Bliss.

In 1811 General Hunter, then President and Commander-in-Chief, appointed Mr. Bliss as Clerk of the House of Assembly.

A vacancy taking place in 1813 in the representation of York by the death of Duncan McLeod, Mr. Bliss was elected to the vacant seat.

The following is from the pen of Mr. Bliss, in which he states in detail the circumstances which led to his appointment to the Bench, and intimates the great sacrifice made in accepting the judgeship.

In April, 1815, a few days subsequent to the death of Mr. Justice Winslow, I was requested by message from General Smyth to call on him at Government House.

When we met, he said that the recent death of a Judge had put it in his power to offer me a seat on the Bench, and rejoiced in being able so to do, as he hoped that my objection which had been heretofore made to accepting a seat in the Council would thereby be removed. I observed that I could not, in justice to my family, accept of his friendly offer, that I was in full practice at the Bar, and had for a year or two been in the annual receipt of fifteen hundred pounds, and had thereby been enabled to maintain a respectable appearance, and lay up something for the future support of my family, whereas the salary of five hundred pounds would not admit of my living as I had been accustomed to do. General Smyth was very urgent, said he should not cease to press for an increase of salary for the Judges, and spoke of the probability of my advancement on the Bench. I then suggested Attorney General Wetmore; General Smyth acceded, and directed me to consult him, but he declined. General Smyth then observed that applications had been made, but he could not support them, and that it was quite likely the vacancy would be filled from abroad, in which case it would be difficult to restore the succession to New Brunswick. I at length agreed to become a candidate for the office, and wrote an official note to that effect; but before the appointment was confirmed at home, a dispatch was received from the Colonial Office to

know why the Attorney General was passed over. This being explained, a memorandum was received 9th July, 1816, dated 25th May, on which former day I took my seat on the Bench, and continued in the active discharge of the duties of that office until the 21st of February, 1824, when I succeeded to the administration of the government on the death of Honourable Ward Chipman, President and Commander-in-Chief.

The Bench and Bar of the Province at this time (1816) were as follows: Chief Justice, the Honourable Jonathan Bliss; Puisne Judges, Honourables John Saunders, Ward Chipman and John Murray Bliss, Members of the Bar—Fredericton, Thomas Wetmore (3), Samuel Denny Street, William Franklin Odell; St. John, Charles J. Peters, Ward Chipman, Jr., Edward J. Jarvis; Westmorland, William Botsford; Northumberland, Thomas Horsfield Peters; Charlotte, Harris Hatch.

John Murray Bliss, on his becoming President and Commander-in-Chief on the death of Ward Chipman, announced the same to the Legislature in the following manner:

The business of the Legislature having been suspended by the death of the Honourable Ward Chipman, the late President, the House of Assembly is informed that John Murray Bliss has taken upon himself the administration of the Government, and that they are at liberty to continue business.

J. M. B..

The following complimentary and congratulatory address was presented to Mr. Bliss on his becoming administrator of the Province:

To the Honourable John Murray Bliss, President of New Brunswick:

The Humble Address of the Magistrates and Principal Inhabitants of the Town of Fredericton and Vicinity.

MAY IT PLEASE YOUR HONOUR,—

We, the Magistrates and Principal Inhabitants of the Town of Fredericton and its vicinity, congratulate your Honour

on your accession to the administration of the Government of this Province in consequence of the death of the late President, the much lamented Ward Chipman, whose administration has met general approbation.

We have always entertained a high opinion of your Honours' public and private character, and we feel satisfied that the same industry, integrity and independence which so distinguished your Honour at the Bar, and on the Bench, will still continue to direct your Honour in discharging the duties of the high and important office you now fill.

To this address Mr. Bliss replied as follows:

To the Magistrates and Principal Inhabitants of the Town of Fredericton:

GENTLEMEN,—

After a residence among my fellow subjects in the County of York for a space of thirty-three years in the discharge of many duties, I beg to assure you, gentlemen, that no one event could have more effectually gratified my pride or excited my gratitude than the assurance you have this day honoured me with, your approbation of my conduct, and I most sincerely hope, whatever may be my future situation in life, I may continue to warrant your good opinion.

The tenure of the office of administrator of the Province by Judge Bliss was not for an extended period. This, however, could not have caused him any great disappointment, as, even before the death of Judge Chipman, the late President of the Council, it was understood in the Province that Sir Howard Douglas was to be the next Governor, and would shortly be appointed. When Sir Howard came to St. John as Governor of the Province, his arrival was recognized as an event of great interest by the Common Council of St. John, as evidenced by the following proceedings:

At a Common Council held at the City Hall, on Thursday, the 12th day of August, 1824, it was

Resolved, That this body are of opinion that Sir Howard Douglas, the newly appointed Governor of the Province, be received on his landing with all due marks of respect; and

this Board will, in a body, accompanied by all the officers of the Corporation, attend and meet him at the shore; and be it

Further resolved, That all the Magistrates of the City and County be respectfully requested to accompany them on this intended mark of respect, and that the Recorder, Alderman Wilmot and Alderman VanHorne be a committee to digest and prescribe the order of the procession which shall be adopted for the purpose of carrying this resolution into effect.

The Civic Committee determined upon the following order of procession, to be observed on the landing of His Excellency, Major General Sir Howard Douglas, Bart., Lieutenant Governor, &c., &c., &c., at the City of Saint John.

AS DIRECTED BY THE COMMON COUNCIL.

On the arrival of H. M. S. "Samarang," with His Excellency the Lieutenant Governor, the City Marshalls will be dispatched on board, and deliver to His Excellency a communication from His Worship the Mayor, enclosing a copy of this order, and requesting to be informed of the time His Excellency may be pleased to land in the city.

On His Excellency's landing he will be received by the Mayor and other members of the Corporation, and Magistrates of the City and County, at the head of the Waterloo Stairs. (4).

A double line will be formed beyond the guard of honor to the place provided for His Excellency's reception by the militia in uniform, under the command of Major Drury, for the procession to pass through.

On His Excellency and suite setting off from the landing place, the following procession will be formed:

After His Excellency and suite the members of the
Corporation, consisting of
The Mayor and Recorder,
Aldermen,
and Assistants,
Clerk and Chamberlain,
Sheriff and Coroner,
The Magistrates of the City and County of Saint John,
&c., &c., &c.

DURANT, *Printer.*

At the Easter Term of the Supreme Court, held at Fredericton with a full Bench, May 12th, 1828,

Attorney-General Bliss having died two months previously, and Solicitor-General Peters being absent in England, the Crown business was conducted by Robert Parker, who subsequently became Chief Justice of New Brunswick. John Baker, of Madawaska was placed at the Bar, and found guilty of conspiracy to excite sedition and disaffection to the Government of the Province. When arraigned, he was asked by the Court if he had anything to say in mitigation of his conduct, and he addressed the Court subsequently as follows:

That having been brought here and made amenable to the jurisdiction of this Court, he was bound to submit, he had nothing particular to urge and no affidavit to produce; there were circumstances which, if he could be able to bring forward, might have been of use, but as he was not prepared with all, he considered it not worth while to adduce any proof; he submitted himself to the consideration of the Court.

His Honor, Mr. Justice Bliss, then proceeded to pass sentence to the following effect:

That the defendant, John Baker, had been indicted by the Grand Jury of the County of York for a seditious conspiracy, committed by him and others within the jurisdiction of this Court, to which he had pleaded not guilty, alleging, at the same time, that he did not consider himself amenable to the process of this Court, being a citizen of the United States, and that the offence charged was committed within their territory; but the Court could not admit this to be the case, it appearing clearly that the Madawaska settlement, where the offence was committed, had been from the first erection of the Province hitherto under our laws, and subject to our jurisdiction; and after a very fair and full investigation of the case, he, the defendant, had been convicted by a jury of the country, and it now remained for the Court to pass their sentence upon him for this offence; in doing which their object was to treat him with that lenity, which, so far as was consistent with the ends of justice, was uniformly extended to His Majesty's subjects; and although the Court considered the crime of which the defendant has been found guilty of a

very aggravated nature, they have had regard to his previous long imprisonment; and the object being to secure the future peace of the country, and not to pass a vindictive sentence personally against himself; they had awarded the punishment accordingly, and did sentence him to be imprisoned in the common gaol of the County of York, for the term of two calendar months, and to pay a fine of £25 to the King, and remain committed until the fine be paid.

The two following prisoners likewise received sentence: Michael McCarthy, found guilty of Grand Larceny, was sentenced to six months imprisonment, and to receive 39 lashes at the public whipping post to-day, and 39 on the day of the expiration of his imprisonment. Patrick Shea, found guilty of petit larceny, to receive 39 lashes at the public whipping post to-day, and be then discharged.

Sir Howard Douglas was no ordinary man. He was Governor of the Province at the time of the great Miramichi fire in 1825, and in consequence of the prompt and wise measures then taken by him much of the misery attendant upon that calamity was mitigated. He will always be held in remembrance by the people of New Brunswick as one who obtained the Royal Charter for King's College at Fredericton, and was the first Chancellor of the institution. The opening of the college and the inauguration of Sir Howard Douglas as Chancellor took place January 1st, 1829. The spacious hall was fitted up for the occasion, and was filled by a large and representative gathering which had convened to witness the ceremonies of the inauguration. The following account of the proceedings is from the newspaper reports of the time:

The Rev. James Somerville (5), LL. D., accompanied by the Rev. Abraham Wood, A. M., the Rev. George McCawley, A. M., and the Rev. George Cowell, A. M., followed by the students of the college, all in their appropriate robes, first

entered the hall and passed over to the left hand side of the Chancellor's chair. The members of the House of Assembly soon after followed, and seated themselves on the left hand side. Next came the members of His Majesty's Council, who took their seats on the right hand side. The ladies were accommodated with seats near the Chancellor's chair.

The case containing the Royal Charter being placed upon the table in front of the Chancellor's chair, and all things in readiness, His Excellency the Lieutenant-Governor, attended by his suite, was ushered in at the lower end of the hall, and, after a pause of a few seconds, during which His Excellency bowed to the assembled body, and to the different branches of the Legislature, His Excellency passed onwards and seated himself in a chair placed by the side of that intended for the Chancellor.

Profound silence prevailed. Every mind present must have been sensibly touched at the interesting scene. Every eye was anxiously bent upon the illustrious person, who was now about to confirm to the rising and valuable colony of New Brunswick, the possession of a lasting monument of the paternal regard and beneficence of the most enlightened monarch of the age; of a Sovereign, truly worthy of the affectionate loyalty of his subjects; of a Prince, whose diadem is adorned with the most costly, durable and precious gems—the heart-felt love and veneration of a free and enlightened people.

After a pause of a few moments, His Excellency rose, and, addressing the audience, said:

“This good and sufficient building having been erected for the establishment of a college, the object of this meeting is to present and to call into operation a Royal Charter, which His Majesty has been pleased to grant for establishing a college in this Province by the style of King's College. New Brunswick.” Hereupon, His Excellency having again sat down, the Rev. Dr. Somerville addressed the audience to the following effect:

“It is to be hoped that in the history of New Brunswick this day will form an important era. The purport of this meeting has already been explained by His Excellency the Lieutenant-Governor; but the office which I have hitherto held in the college and in consequence of special request, I deem it proper to make a few remarks:

“The momentous concerns of education have, with a most commendable and liberal spirit, engaged the attention both of

the Executive Government and Legislature of the Province from very nearly the time that New Brunswick was made a separate colony. As early as the year 1800, a Provincial Charter was obtained for the establishment of a college in Fredericton for the instruction of youth in the liberal arts and sciences, with a power of conferring degrees in the different faculties, and with a very liberal endowment, considering the then state of the Province, the many difficulties which the first settlers had to surmount, and the great privations to which they had to submit. For a good many years the circumstances of the country were such, that this charter could not be acted upon in its full extent, and the establishment was necessarily confined to an English and Grammar School. In the year 1820, however, it was deemed expedient to organize the college, and to put it into effectual operation. For that purpose a president was appointed, with a code of statutes framed and ordained by the Governor and Trustees for regulating the discipline and internal economy of the institution.

"For very obvious reasons I decline to enter into any detail of how the duties have been performed as far as I am personally concerned, since the time that the college went into operation. But there is a justice due to others which I am called upon to discharge, and that is, that during the time that I have been President, there have been connected with the establishment an English and Grammar School of distinguished excellent, to the instructors, in both of which I think this community are under peculiar obligations for the important benefits which the youth have derived from their care, tuition and exemplary conduct. The Province Charter was found to be so defective and so inadequate to the purposes for which it was intended, that in the month of March, 1823, the Governor and Trustees obtained an Act of the Assembly to enable them to make a conditional surrender of the Province Charter into the hands of His Majesty, and praying to him to grant them a new one, which Act His Majesty ratified and confirmed the 13th of November in the same year. And His Majesty was graciously pleased to grant a new charter, dated December 15, 1827—which charter is now to go into operation upon the surrender of the old one."

The learned Doctor having concluded, George Frederick Street then read the Royal Charter, when His Excellency again rose and said:

"Before I proceed to call into operation the new Charter,

I perform an act of great justice to all the persons who have acted under that which has been surrendered, in expressing the full and entire approbation with which the services of the Trustees have, I am sure, ever been viewed, and which I have ever experienced, and in this I desire to include the strong sense I entertain of the merits and services of the gentlemen who have acted in the scholastic branches.

"Having by the Royal Charter been appointed to the high honor and distinction of first Chancellor of this college, I assume accordingly this chair as Chancellor of King's College, New Brunswick, and declare that this college is instituted accordingly, by virtue of the said Royal Charter."

Here His Excellency, whose active feelings throughout the whole of the ceremony must have been evident to every individual in the hall, and particularly so at this moment, seated himself in the Chancellor's chair.

The interest deepened. After a few minutes the Chancellor rose, and proceeded in nearly the following words :—"That charter having further ordained that the Chancellor shall, upon or immediately after the first institution of the college, nominate and appoint seven discreet and proper persons to form, together with the said Chancellor and President of the college, for the time being, an original council, with power and authority to frame and make statutes, rules and ordinances for the good government of this college; and also touching and concerning any other matter or thing which to them shall seem good, fit and useful for the well-being of the said college, I do hereby nominate the following distinguished and highly fit and proper persons to be of the first council of this college: The Hon. the Chief Justice, the Hon. Judge Chipman, the Hon. Judge Botsford, Charles Simonds, Esq., Speaker of the House of Assembly; Charles Jeffrey Peters, Esq., Attorney-General; Robert Parker, Esq., Solicitor-General; William Franklin Odell, Esq., Secretary of the Province.

"Do you honorable gentlemen, and gentlemen—such of you as are now present—do you assent to take upon yourselves the duties of members of this college council, according to all the terms and conditions of this Royal Charter?"

As the Chancellor addressed each of the gentlemen then present they severally assented.

The Chancellor then went on to observe:

"Since you have assented to give to this institution the benefit of your talents and services as members of the Council

thereof, I shall cause warrants to issue, appointing you to be members of that body accordingly, and shall call upon you forthwith to act and serve as occasion may require.

"In the selections which I have thus made to compose this first Council, I feel entirely satisfied that I have formed a body possessing in eminent degrees qualifications which will enable me to proceed to consider, with them, the great primary duties which we have now to discharge in completing the arrangement necessary to bring King's College, New Brunswick, into full operation. Assisted so ably, I am confident that this will be effected in a manner creditable to yourselves, beneficial to the institution, and advantageous to the country."

The Chancellor then sat down. Dr. Somerville then delivered an oration, which was followed by a prayer, after which the Chancellor rose and said:

"In the course of a much diversified public life, in which I have been called to act in many different situations, and in several capacities, I have never been more completely satisfied on the accomplishment of any public purpose, never more highly gratified on the attainment of public station, never so sensible of the value of official influence, as now on the completion of this noble edifice, and in the capacity of Chancellor of this Royal University meeting you within these walls on this most interesting occasion.

In assuming this high station, I have taken the chair with infinite pleasure, to preside at this ceremonial, the commencement of an institution which I trust shall soon be raised to excellence, and be made to produce every benefit, and every advantage which can result from such an establishment. The day is peculiarly appropriate for the purpose. At this particular season we have all been accustomed, from our earliest years, to hear the voice of congratulation, to be presented with the offerings of affection, to receive the paternal benediction. At such seasons we take occasion to bestow the benefits, and dispense the acts of grace or of favour which we contemplate to confer on those whom we regard; and, thankful for the past, we pray to Almighty God for His blessing on the undertakings and proceedings of the period to come. Animated by such sentiments and feelings towards the people of New Brunswick, warmed by such associations with the kindly usages of life, and devoutly invoking the Divine blessing on this great undertaking, I feel that I have selected a day the most appropriate for inaugura-

ting this goodly work—an offering consecrated to the service and dearest interests of the country from the paternal hand of our beloved Sovereign. In his name, and on his behalf, I present this, his paternal benediction, to his faithful and loyal people of New Brunswick. In his name, I thank the Legislature of this land for having enabled me to do so, in this capacious hall, to a numerous assemblage of persons deeply and tenderly interested in the proceedings of this day, and on which I sincerely and cordially congratulate them, and all the people of this country. For myself, I shall ever reflect, with infinite pleasure and satisfaction, that the opportunity presented itself to me, to take up and begin, in principle, this important work at the earliest period of my government; so early, indeed, as to form the first, as it is the greatest object of my ambition. I could not fail to endeavour to improve that opportunity, and in this favourable result New Brunswick will ever be deeply indebted to the King's ministers, and particularly to the noble secretary whose name is affixed to that Royal deed.

“Proceeding to the execution of this great work, I shall ever rejoice that it has fallen to my lot to lay not only figuratively, but absolutely, and with my own hand, the corner stone of this building; that I have been spared to witness its completion; and that I am now called upon, nominally, by the King in that Royal deed, to proceed, in person, to form the great moral superstructure which we are now about to raise.

“As the architect of the material fabric has been careful to make his selections of the best qualities, and of natures the least perishable, and to put them together with a master hand, so I, in proceeding to this great moral work, have been careful to select, and will avail myself of qualities of the highest order, materials of the first description, persons who will perfect and adorn the whole structure, and who will perform their duties in a manner that shall form a character and establish a system for this University, which I trust shall be subject to no decay. I shall not attempt to enlarge upon these several great objects, near and dear interests, which will be ensured and promoted by an establishment wisely and liberally constructed and adapted, as this is, to the wants and conditions of the country, and managed, as I think I may safely pronounce this institution will be. Such a dissertation on my part would, on many accounts, be unnecessary. Well and wisely have you felt, powerfully and effectually have you

represented, the high expediency and necessity of possessing such an institution, or never should I have been enabled to effect this. The beautiful and classical oration we have just heard, moreover, entirely dispenses me from venturing, as I may have contemplated to do, an exordium on the classic grounds which the learned Doctor has so fully and beautifully occupied.

“In that oration the learned gentleman has most graciously displayed the qualifications and the advantages of sound learning and useful knowledge. That oration leaves me nothing to express but admiration, whilst it affords us everything to hope and to expect from the continued services of such a professor at this institution. I perceive, as well as feel, that we have all been sensibly touched by the characteristic, appropriate and affecting construction he has given to his discourse by the impressive manner in which it has been delivered, and the solemn form in which the learned and Rev. Doctor has, in conclusion, led us to join with him in prayer, for the success of this institution. I trust that oration will be preserved to stand in letter, forming, as it does, an admirable prospectus of the constitution, and objects of this institution, and affording a beautiful and most satisfactory specimen of the manner in which divinity and ethical classes will be conducted by that learned and exemplary divine. I am happy to announce that a most judicious and highly satisfactory selection has been made, and all but ratified, of a highly competent person as vice-president, acting and resident head of this college. We are very fortunate, also, in retaining the services of a distinguished and experienced person whom we all well know and highly estimate, and who will fill the chair of other professorships in this university. (6).

“Nothing seems wanting to ensure the success of this institution. A convenient and commodious edifice, a salubrious situation, a convenient position, central in the Province, a liberal constitution, under a Royal Charter, a revenue adequate to all immediate purposes, and real endowments which will improve in value with the improving value of the times. The situations of instruction, filled, as I have said, with highly competent professors, and highly estimable men; the subjects of their care, the youth of a religious, virtuous, moral, able and well disposed people. Such honourable gentlemen and gentlemen of the College Council, such are the material and financial means, such are the morals and intel-

lectual capacities which the liberality and patriotism of the Legislature, the paternal regard and munificence of our beloved Sovereign, and the bountiful hand of God, Creator of all, provide, contribute and present, in trust, to us, to be zealously, faithfully, and effectually applied, used and managed, to effect the great object which we have engaged to undertake. And what is that object? The greatest blessing that can be bestowed upon man, next to the divine blessing, the blessing of a good, sound, virtuous and useful education. When the human endeavor is well and properly applied to this great end, it cannot fail to be attended by that, without which no human effort availeth. May our endeavours here and those labours which are to succeed to ours be eminently such as to merit the favor of God, secure the estimation, and promote the best interests of these, His people. From the domestic circles of a virtuous, moral, religious and loyal people, may successions of well-disposed youth nurtured in such principles, and strong in the domestic affections, beautifully termed the nurses and guardians of virtue—may such hither resort and here be formed to virtuous, well educated, accomplished manhood. Here may they abundantly lay up for themselves, and hence carrying into the world ever retain and always display, in all the duties, relations and stations of life, the blessings and the comforts, the qualifications and advantages, of a sound, virtuous religious and useful education—may such as should be spared to withdraw, in the evening of their days to the retirement and enjoyment of domestic life take with them to the bosoms of their families consciences devoid of stain and conduct devoid of censure; and may these attractive examples of well-spent lives serve to sustain and enforce the sound precepts which it will be their chief pleasure, their most interesting occupation, and their bounden duty, to instil into the minds of youth. Firm may this institution ever stand and flourish—firm in the liberal constitution and royal foundation on which I have this day instituted it, enlarging and extending its material form and all its capacity to do good, to meet the increasing demands of a rising, prosperous and intellectual people; and may it soon acquire, and ever maintain, a high and distinguished reputation as a place of general learning and useful knowledge. I indulge myself with the hope that, if not a witness, I may at least learn, and from authority, that such is the progress of this college; and to insure this I desire always to enjoy identity with the insti-

tution. So long as I shall occupy by right of office this Chair, I will discharge all its duties, to the best of my powers, for the good of the College; and will personate it on all occasions, in a manner that shall be devoted to its service. When no longer entitled to this seat, I shall seek the honorary distinction of another place, still to remain a member of this learned body. I shall leave with you, in trust forever, a token of my regard and best wishes. It shall be prepared in a form and devoted to a purpose which I hope may prove an useful incitement to virtue and learning; and at periodical commemorations of this Commencement it may serve to remind you of the share I have had in the institutions and proceedings of a day which I shall never forget.

The "token" left in trust by Sir Howard Douglas was the very handsome Douglas Gold Medal which is annually awarded for the best English essay, and is justly considered the "blue ribbon" of the college.

In 1828 the British Government and the United States decided to submit the question of the "North West Angle" to the King of The Netherlands. In consequence of Ward Chipman having represented the British Government in the previous efforts to locate the angle, his presence was deemed indispensable. The British Government, however, in view of the great interests involved, decided to associate Sir Howard Douglas with him. As Judge Bliss was the senior member of the Council, he reasonably supposed that the office of President and Commander-in-Chief would, as on previous and similar occasions, devolve on him. His expectations, however, were not to be realized, for reasons which are best stated in his own words, as follows:

In the autumn of 1828, I was informed by Sir Howard Douglas, that he was ordered to repair to England on the subject of the disputed boundary between New Brunswick and the United States, and that I, being senior Councillor, must hold myself in readiness to assume the government in his absence. Judge Chipman had already sailed for England,

on the same business. Prepared in full expectation of once more entering upon the duties of the high office, I was much surprised on the 25th of January, 1829, to be informed by Sir Howard Douglas that it was His Majesty's pleasure that I, being a Judge, should not succeed to the administration, but that Mr. Black would be commissioned for that purpose; this was certainly unlooked-for by me, and I did not consider the reason assigned a good one. On the 15th of March, I was favoured by Sir Howard Douglas with a copy of the following despatch from the Colonial office:

" DOWNING STREET, LONDON,
8th January, 1829

" My Dear Sir:—

"You have already been informed that it has not been considered expedient, that Mr. Bliss (being a Judge of the Province) should succeed to the Government of New Brunswick during your absence from it. I have been given to understand, that this arrangement may create some uneasy feeling in this gentleman's mind, as well as in other minds of the Judges of the Province. To remove this, if possible, Sir George Murray requests that you will communicate to Mr. Bliss his assurance that he would have been happy to have placed in his hands the government of the Province, but the objections to the appointment of a judge to administer the civil government in any of His Majesty's colonies are at all times considerable, and that in the present instance the state of our discussions with the American Government and Mr. Chipman's absence, renders it extremely desirable that the time of the Judge should be wholly devoted to his judicial duties, and the person administering the government should not be diverted by any other charge from the important subjects which require his attention.

I remain, etc.,

R. W. HAY.

SIR HOWARD DOUGLAS."

The grounds for passing over Judge Bliss, the senior Councillor, and appointing the next in order of seniority, are strong, as his absence from judicial duties during the absence of Judge Chipman, which was nearly two years, would have left Chief Justice

Saunders and Judge Botsford to attend the circuits and dispose of the business of the terms at Fredericton and at Chambers, at a time when the Chief Justice was in his 75th year, and unable to travel any considerable distance. On the death, in 1834, of Chief Justice Saunders, Judge Bliss applied to the British Government for the vacant position, and pressed his claim with much vigor. The expectation of the Bar was that he would succeed to the Chief Justiceship as senior Puisne Judge on the Bench. On the death, in 1822, of Chief Justice Bliss, the senior Puisne Judge, the Honorable John Saunders, was appointed. On the present occasion the office was given to the junior Judge on the Bench.

Although there were strong grounds for Judge Bliss not succeeding to the office of President and Commander-in-Chief, there were none for withholding from him the office of Chief Justice. Before the news of the actual appointment had reached the Province, however, it had ceased to be of importance to one of the applicants, whose life on earth was ended. Judge Bliss died, when on a visit to St. John, on the 29th of August, 1834, in the 64th year of his age. Mrs. Bliss, daughter of the Honorable Judge Upham, died at Belmont in 1835, aged 58 years. There were daughters surviving. Mary, the eldest, who in 1819 married Captain McQueen (7), of the 74th Regiment; she died at Halifax in 1826. Elizabeth, in 1822 was married at Belmont to Hugh Johnston, Jr., one of the representatives in St. John in the House of Assembly; Mrs. Johnston died in 1826. There was one son, George Pidgeon Bliss, Receiver-General, who in 1819 married Sarah, daughter of Attorney-General Wetmore. He died in 1836, aged 38 years. His widow died in 1886, aged 84 years. A son, George J. Bliss, Clerk of the House of Assembly, died in

1888, aged 64 years, and another son, Thomas Wetmore Bliss, died at Richibucto in 1889, aged 68 years. Judge Bliss was a man of fine presence, courtly and high spirited, and was possessed of all the qualities desirable for a Judge, and calculated to impart dignity to the judicial office. On his promotion to the Bench he moved to the property belonging to the family situated at Belmont (8), ten miles below Fredericton, where he erected the most stately dwelling at that time on the River St. John.

The following account of the death and funeral of Judge Bliss is taken from the *St. John City Gazette* of date August 28, 1834: (9).

It is our painful duty this day to announce the death of the Honorable John Murray Bliss, senior Judge of His Majesty's Supreme Court for this Province, who departed this life on Friday evening last at 10 o'clock, after an illness of about four weeks, aged sixty-three years. Judge Bliss was a native of Massachusetts, in the United States, whence he removed on the breaking out of the Revolutionary War, and came to this Province in 1786. He practised with great success at the Bar for many years, during which time he filled the office of Solicitor General, and several other offices connected with his profession. He represented the County of York in General Assembly for several years, and in July, 1816, was elevated to the Bench, and at the same time appointed a member of His Majesty's Council. In 1824, on the death of the Honourable Ward Chipman, then President and Commander-in-Chief, Judge Bliss succeeded to the Administration of the Government and continued in office until the arrival of Sir Howard Douglas as Lieutenant-Governor, a period of about a year.

Such is a brief history of the principal events in the life of this distinguished individual; but we would be wanting in the duty we owe to the public, were we to omit the expression of those feelings of respect for the character of the deceased which we share in common with the inhabitants of the Province at large, and which the uniform tenor of his conduct during the many years he has been before the public eye, has so generally produced.

Whether as a Judge on the Bench, as Administrator of the Government, a Director of its Councils, or as a member of the Legislature, his manly, open and independent deportment commanded universal confidence and esteem, whilst the dignity of his demeanor and the distinguished urbanity of his manners, both in public and in private, won for him the regard of all who were brought into contact with him. Among the members of the profession to which he belonged, he was both revered and beloved: as well in society at large as in public life, his death has left a blank which will be felt as generally and deplored as deeply as in the case of any individual whose loss the public could have been called on to lament.

We draw a veil over the sorrows with which such a man must be regretted by the afflicted relatives whom he has left behind him; but if public sympathy can tend to soothe their present anguish, we feel assured they will possess this source of consolation in no ordinary degree.

The body was conveyed to Trinity Church at two o'clock on Tuesday last, and thence to the new burying ground, where it was interred. The following was the order of procession observed on the occasion: Constables, Marshals, High Constable, Deputy Sheriff, Registrar and Chamberlain, Clerk of the Peace, Sheriff and Coroner, County Magistrates, Assistant Aldermen, Aldermen, Recorder, Members of the House of Assembly, Members of His Majesty's Council, Sexton, Clerk and Undertaker, Body, Physicians, Clergy, Assistant Commander General Robinson, Hon. Rich'd Simonds, Hon. Judge Jarvis, His Worship the Mayor, Hon. William Black, Honourable Judge Chipman, Mourners, Gentlemen of the Bar in their robes, Citizens.

During the time the procession was moving the stores were closed, and the ships in port wore their colours half mast.

Our early legislators do not appear to have been in any hurry about providing a House of Assembly for the Province. In his speech at the opening of the Legislature at the session beginning February 5, 1791, Lieutenant-Governor Carleton, among other matters, stated:

It is also highly requisite that some provision be made for the decent accommodation of the General Assembly and the Courts of Justice. I have, therefore, directed a plan for this

purpose, to be prepared and submitted to your consideration.

The plan proposed by the Governor was to fit up the church at Fredericton, but it did not commend itself to the favorable consideration of the committee to whom it was referred. The committee, appointed February 14, 1791, was composed of Messrs. Dixon, Glenie, Rogers, Hardy and Capt. Lyman, and they presented their report on February 16, 1791, as follows :

The committee appointed to examine the plan submitted to the consideration of the House for fitting up part of the Church at Fredericton for the accommodation of the Courts of Justice and House of Assembly, have accordingly done so, and also inspected the Church itself. As to the plan, they beg leave to report it as their opinion, that if it was carried into execution it would not afford the requisite accommodation for the Council and House of Assembly. As to the Church, they find the roof of it to be on a bad construction, and conceive it impracticable to support it effectually without erecting a double row of pillars, throwing tie beams across, and fixing studs or props from the same perpendicularly to the rafters and collar beams. As no estimate of the expense necessary for fitting up the Church agreeably to the proposed plan has been laid before the committee, they cannot speak positively to this point, but are, however, of opinion that the sum requisite for finishing the plan and effectually securing the roof of the Church (without which the finishing of the plan would be useless) is equal to what would be sufficient for erecting a compact building with more convenient accommodations.

At the same session of 1791, on the third day of March, it was

Resolved, That it is the opinion of this committee that commissioners be appointed by the House to prepare and report at the next session a plan and estimate of the expense of proper buildings for the accommodation of the General Assembly and the Courts of Justice, and that the sum of £100 be granted to the said commissioners to purchase such boards and planks therefor as may require seasoning before they are wrought up.

This report was accepted, and George Duncan Ludlow, John Saunders, James Glenie, Daniel Murray and Daniel Lyman were appointed the commissioners, and they reported in 1792, but nothing practical came of it. The Governor, however, appears to have been persistent in the pursuit of his object of having suitable accommodations for the Legislature and Courts of Justice, for we find in his speech at the opening of the session, February 14, 1793, he again says:

A plan of a suitable building for the decent accommodation of the General Assembly and the Courts of Justice, and for which a convenient situation in the Town of Fredericton has been allotted, was recommended to the consideration of the late House of Assembly: to whom also I suggested the importance of making some annual allowance in support of a Provincial Seminary of Learning, of which a foundation has been laid by an allotment of lands adjacent to this town, but which cannot, for many years to come, be sufficiently productive to answer the exigencies of such an institution; and I earnestly recommend it to you, as a business that calls for your immediate attention, to make effectual provision for both these objects, which are of such urgent importance.

The Assembly, in their answer to the speech from His Excellency, express themselves fully satisfied as to the importance of both objects, and declare that "we shall, as the abilities of this infant Province will enable us, make such provision as their respective importance requires." The work was delayed until 1799, when the corner stone was laid, and, at the session of 1802, the commissioners having in charge the construction of the building, reported as follows:

TO HIS EXCELLENCY THE LIEUTENANT-GOVERNOR:

The Commissioners appointed to contract for building a Province Hall, for accommodation of the General Assembly and Courts of Justice, beg leave to report that, in addition to the sum of £1,523 6s. 0½d. expended in pursuance of their contract with Messrs. Smith & McBeath, in erecting and enclosing this building, it has been found necessary to incur the

expense of £249 16s. 9¼d. for painting, and other extra labor and materials, including eight stoves, and the expense of putting them up, to prepare the building as in its present state, for the public accommodation.

Of these expenses accounts are herewith exhibited for your Excellency's future information.

GEORGE D. LUDLOW,
JONATHAN ODELL,
S. AGNEW,
ARCHIBALD MCLEAN,
GEORGE SPROULE.

Fredericton, 10th February, 1802.

NOTES

(1) The first two sessions of the Legislature, those of 1786 and 1787, were held in St. John, in a building known as the "Mallard House," on King Street, the site of the present Royal Hotel. The capital of the Province was selected at Fredericton by Governor Carleton, who was of the opinion that the public records and government buildings would be more secure there from hostile attack than in St. John, so near the seaboard. The first session of the Legislature, held in Fredericton, took place on the 18th of July, 1788. The Assembly had been prorogued until Tuesday, the 15th day of July, of that year, then to meet at Fredericton, but a sufficient number of members to compose the House were not in attendance, and the House did not meet for business until the 18th of July. The building in which the Assembly convened is still standing, and is a few doors south of the Queen Hotel, and about opposite the old Central Bank building. It is therefore nearly 125 years old. It was rented from Cornelius Ackerman at £40 per year. Upon this old building is a tablet with the following inscription: "The Legislature of New Brunswick met first in Fredericton in this house, July 15th, 1788, and for twelve years there-

after. This tablet was erected May 24th, 1901, by the Daughters of the Empire."

Subsequently the sessions of the Legislature were held in the Province Hall, or House of Assembly, the corner stone of which was laid by Governor Carleton, May 15th, 1799, and the building was first opened for the meeting of the Legislature in 1802. This old building was burned February 25th, 1880, and the site is now occupied by the present stately and handsome Provincial buildings, which were first occupied in 1882.

(2) The following notice as to a desertion from the New Brunswick Regiment, afterwards the 104th, is interesting:

THREE GUINEAS REWARD.

DESERTED, on the evening of the 5th inst., from His Majesty's New Brunswick Regiment, quartered at Fredericton, JOHN TAYLOR, by Trade a Barber, Twenty-seven years of Age, Five Feet three inches high, fair complexion, blue eyes, brown hair, had on when he went away a round blue jacket, pair of Regimental white Pantaloon, yellow Handkerchief round neck, round hat, and took his side Arms with him.

WHOEVER apprehends the said Deserter and delivers him up to any of His Majesty's Posts or Garrisons, will receive Three Guineas over and above the Reward offered by Act of Parliament.

And Notice is hereby given to the Inhabitants of the Country, that on any future Desertion from the Regiment, Three heavy guns will be fired from the Garrison at an interval of ten minutes between each gun, and a reward of Three Guineas is hereby offered to any person who shall apprehend and deliver over any Deserter at the Head-Quarters of the Regiment, or any Post or Garrison within the Province.

By Order of the Brigadier General Hunter.

H. W. HAILES, *Brig. Maj.*

N. B., Fredericton, 8th Aug., 1804.

In 1811, the regiment was taken into line as the 104th, or New Brunswick Regiment. It took part in the war of 1812, marching through to Canada in the winter. "The 104th, now in Upper Canada, have lately had a severe brush with the Americans. A great proportion of the officers, among whom were Leonard, Moody, Drummond Shore, A. Rainsford, etc., were wounded." Thus wrote Edward Winslow in 1813. In 1849 the Legislature of New Brunswick recognized the great services of Lieut. Charles Rainsford (who saved the regiment from perishing by a journey on snow-shoes) in granting him 500 acres of land. He died, 1882, at Kingsclear, aged 94 years.

(3) The father of Thomas Wetmore, Timothy, son of the Rev. James Wetmore, Rector of Rye, New York, was one of the first graduates of King's College, New York. At the opening of the Supreme Court in St. John, 1788, Timothy Wetmore was admitted to the Bar. He settled at Gagetown, where he held a number of county offices. His son Thomas studied law in the office of Ward Chipman, and in 1788 was admitted as attorney. The following is the advertisement of the legal co-partnership between father and son:

LAW OFFICE.

At the house lately occupied by Mr. Fitzsimon, King Street, St. John, where constant attendance will be given. Having also an office at Fredericton, the seat of the Government, they will have it in their power to transact business with the utmost dispatch, the rules of government will admit.

TIMOTHY WETMORE,
THOMAS WETMORE.

16th July, 1793.

In 1800 Timothy Wetmore returned to New York, where he died in 1820, in his 85th year. Thomas Wetmore, in 1793, married at Gagetown a daughter

of James Peters, and on the death of Colin Campbell, in 1796, was appointed Clerk of the Crown of the Supreme Court. The year 1809 was a red-letter one to Thomas Wetmore, as on the appointment in that year of Ward Chipman to the Bench, he succeeded to the recordership of St. John, and on the appointment of Jonathan Bliss as Chief Justice, he succeeded to the office of Attorney-General, and was elected as one of the members of the Legislature for the City of St. John. Shortly afterwards, Mr. Wetmore removed with his family to York County. His daughter, Margaret, married Thomas Carleton Lee, and another daughter, Ann Peters, married Dr. John Head; the latter died at an early age, leaving a daughter, who subsequently became the wife of the Rev. Canon Ketchum, Rector of St. Andrews. Sarah married George Pidgeon Bliss; Susan, George J. Dibblee, and Emma, John Bedell.

There were four sons, George Ludlow Wetmore, father of the Honorable A. Rainsford Wetmore, a Puisne Judge of the Supreme Court of New Brunswick, and Charles P. Wetmore, for nearly fifty years Clerk of the House of Assembly, who died at Fredericton in 1883, in his 86th year; the latter's son, E. L. Wetmore, is a Judge in the Province of Saskatchewan, Canada. Timothy R. Wetmore, the third son, held an important office in Queens County; he died at Gagetown in 1883, aged 82 years; a daughter married the Honorable D. L. Hanington, a Judge of the Supreme Court of New Brunswick; Thomas, the youngest son, followed the medical profession, and in 1840 married a daughter of the Honorable F. Robinson, Auditor-General, who died at Fredericton. Attorney-General Thomas Wetmore has been described as a man eminently distinguished for his talents, benevolence and hospitality. His hand was

always open to the poor, and he was a friend to all. As a lawyer and advocate, he stood high in his profession. He died at his residence, Kingswood, York County, March 22nd, 1828, aged 62 years.

(4) The steps, or stairs, at the end of the South Wharf, in St. John, were known as the "Waterloo Stairs," and those at the end of the North Wharf as the "Trafalgar Stairs." Down to 1838 the place of the ferry landing was at the end of the South Wharf, and at that time the ferry was by row-boat and scows.

(5) The following correspondence serves a double purpose, first in showing the esteem in which Dr. Somerville was held by leading inhabitants of the Province after a sufficient period had passed to enable them to appreciate his qualities and capacity as an educator and administrator of the educational institution at Fredericton; and secondly, in affording valuable information in regard to his portrait, which is happily in a good state of preservation, and remains to this day on the walls of the university building at Fredericton:

FREDERICTON, 21st February, 1838.

MY DEAR SIR,—It affords me much satisfaction to convey to you the accompanying communication, and I shall have great pleasure in receiving, for the subscribers, your answer thereto.

Believe me, dear Sir,

Sincerely and faithfully yours,

G. F. S. BERTON.

REV. DOCTOR SOMERVILLE.

FREDERICTON, N. B., 21st Feb'y, 1838.

REV. AND DEAR SIR,—

The presence at this time in Fredericton of an Artist of merit, affords an opportunity long desired by us and many others, your Pupils in former days, of procuring your Portrait, to be placed in King's College, as a trifling but sincere tribute of affection and gratitude from those who delight to remember the many and continued acts of parental kindness evinced

towards them in their youth, as a memorial of their sincere respect and esteem for your character as a gentleman, a scholar, and a Divine.

We take the liberty to request that you will gratify us, by sitting to Mr. Holt for your portrait, and by appointing any time that may be most convenient to you for that purpose.

With the warmest feelings of affection and respect, we are, dear sir, your most grateful and obedient servants, John Ambrose Street, Q. C.; L. A. Wilmot, Q. C.; Samuel D. Lee Street, Rector of Woodstock; Charles P. Wetmore, Barrister-at-Law; Alfred L. Street, Barrister-at-Law; T. R. Wetmore, Barrister-at-Law; G. F. S. Berton, Barrister-at-Law; Stephen Miller, Barrister-at-Law; George Lee, Junior, A. B.; Wm. Fraser, Surgeon; Charles Fisher, Barrister-at-Law; C. A. Harding, Barrister-at-Law; G. F. H. Minchin, Barrister-at-Law; W. T. Wilmot, Barrister-at-Law; Thos. S. Wetmore, A. B., Per C. P. W.; William H. Odell, Barrister-at-Law; Henry A. Hartt, M. D.

THE REV. JAMES SOMERVILLE, LL. D., &c., &c., &c.

FREDERICTON, 22nd February, 1838.

MY DEAR SIR,—I have this moment received from you a most gratifying testimony of the esteem and affection of my former pupils. Next to the approbation of my own mind, I value this token of their regard above all earthly rewards, and I want words to express the feelings which actuate me on this occasion. I see those formerly under my care every day rising in public estimation, in the Church, the Senate, at the Bar, and in the Science and practice of Medicine, and am most happy to perceive that the expectations which I had formed of them, at an early period of their lives, have been so amply confirmed by the judgment of men of distinguished ability, in their respective professions, as well as by the suffrages of an impartial and intelligent community. It will afford me great pleasure to comply with their request, and allow me to return you personally my thanks for the friendly and handsome manner in which you have conveyed to me the intimation of the honor intended.

I am, my dear Sir, yours most truly,

JAMES SOMERVILLE.

GEORGE F. S. BERTON, ESQUIRE,
Barrister-at-Law, &c.

Dr. Somerville was the President of the College of New Brunswick, and apparently in himself constituted the entire teaching staff. Mr. Berton consolidated the Statutes of the Province, and was the author of Berton's Reports of the Supreme Court of New Brunswick. His early death cut short a promising career at the Bar.

(6) The early founders of New Brunswick were not unmindful of the necessity of having proper educational facilities for the instruction of youth. See the following interesting memorial:

To His Excellency, Thomas Carleton, Esquire, Governor, Captain General, and Commander in Chief of the Province of New Brunswick and the Territories thereunto belonging, Vice Admiral, Chancellor, &c., &c.:

Your Memorialists, whose names are hereunto subscribed, beg leave to represent and state to your consideration the necessity and expediency of an early attention to the establishment in this Infant Province of an Academy, or School of liberal Arts and Sciences.

Your Excellency need not be reminded of the many peculiarities attending the settlement of this country. The settlement of other Provinces has generally originated in the voluntary exertions of a few enterprising individuals, unincumbered, and prosecuting their labor at their leisure, and as they found it convenient and most for their advantage. Far different is the situation in which the loyal adventurers here find themselves. Many of them upon removing had sons, whose time of life and former hopes call for an immediate attention to their Education. Many publick advantages and many conveniences would result to individuals could this be effected within this Province, the particulars of which it is unnecessary to enumerate.

Your Memorialists do therefore most earnestly request your Excellency will be pleased to grant a Charter for the establishing and founding such an Academy—that proper persons be appointed Trustees, and duly authorized in a corporate capacity to superintend the establishment, &c. That Lands be granted to erect proper Buildings; and other Lands be granted and appropriated for the use of the Academy, particularly they pray for a *part*, or the *whole*, of the reserved

Lands in the neighbourhood of Fredericksburg [sic]. Your Memorialists will not trouble you with any Scheme or Plan of the Charter prayed for, but submit the whole to your judgment and discretion.

And as in duty bound, &c.,

WILLIAM PAINE,
WILLIAM WANTON,
GEO. SPROULE,
ZEPH. KINGSLEY,
JOHN COFFIN,
WARD CHIPMAN,
A. PADDOCK.

The above memorial of Dr. Wm. Paine and his associates was considered by the Governor in Council on the 13th December, 1785, and it was ordered: "That the attorney general and solicitor general be directed, with all convenient speed, to prepare the draft charter for the establishment of the said institution." However the difficulties were such that nothing practically resulted at this time further than the reservation of lands for the benefit of the proposed academy.

During the administration of Lieut -Governor Carleton, a Provincial Charter, under seal of the Province, dated February 12th, 1800, was granted in the King's name, establishing and incorporating the "Governor and Trustees of the College of New Brunswick," with power to confer degrees in the liberal arts and sciences in the same manner as they are conferred by the universities in England. Dr. Somerville was the president and faculty of this institution. Evidently the educational results were not quite satisfactory, for we find on March 25th, 1823, an Act of the Legislature was passed to enable the governor and trustees to make a conditional surrender of their charter, having in view the purpose of obtaining from His Majesty a Royal Charter under the great seal of the

United Kingdom directly from the Crown. The Provincial Charter of the College was surrendered in 1828, and in lieu thereof a Royal Charter was granted by the Crown, incorporating the same under the name of King's College. The Royal Charter under the Great Seal of the United Kingdom bears date the 15th day of December, 1827, in the 8th year of George IV, and by it a college was established, with the privilege of a university, under the name and title of "The Chancellor, President and Scholars of King's College at Fredericton, in the Province of New Brunswick," and, as has been already stated, King's College was duly opened, and the Chancellor, Sir Howard Douglas, inaugurated, January 1, 1829. The Rev. Edwin Jacob, D. D., was appointed president, and continued to hold that position until 1859, when the Act now in force establishing the University of New Brunswick was passed. It is scarcely necessary to apologize for the extended reference to the reception of Sir Howard Douglas and the inauguration of King's College in that portion of this work devoted to the biography of Judge Bliss. The former is largely identified with the history of the Province, more especially to that portion which is contemporary with the life of the Judge, and the college has since occupied so important a position among provincial institutions that it would probably have been unpardonable to have omitted reference to either.

(7) In 1819 the 74th Regiment, one of the most distinguished in the service, was stationed in New Brunswick, under the command of Lieut.-Col. Hon. Sir R. LePeor Trench, K. C. B. While here the following officers of the regiment were married, viz.: Capt. D. D. McQueen, to a daughter of the Hon. John Murray Bliss; Capt. Joshua Wilson, to a daughter of the Honorable John Robinson, Mayor of St. John; Lieut.

and Adjutant Flood to a daughter of Chief Justice Saunders; Capt. Thomas Jones to a daughter of Moses Vernon, St. George; Surgeon Charles Grant to a daughter of the Hon. Harris W. Hailes, Fredericton.

(8) After the death of Judge Bliss, his estate, one of the finest on the River St. John, was purchased by John Wilmot, and subsequently became the property of his son, the Hon. Robert Duncan Wilmot, who at the time of his acceptance, in 1880, of the Governorship of New Brunswick, was Speaker of the Senate of Canada. After the close of Governor Wilmot's tenure of office in 1885, he retired to Belmont, where he died February 12th, 1891, aged 81 years. Part of the estate is now in the possession of his son, Robert D. Wilmot, M. P., who represents the United Counties of Sunbury and Queens in the House of Commons of Canada.

(9) The following is an account of a duel fought between John Murray Bliss and S. Denny Street. Mr. Street's second was Capt. Anderson of the British army then stationed at Fredericton, and the account was drawn up by Anderson, and was kindly handed me by A. F. Street, Collector of Customs at Fredericton, a grandson of S. Denny Street. The duel grew out of a celebrated Slave Case in Court. (Compare here Lawrence's Foot Prints, p. 57.)

Minutes of affair between Samuel Denny Street and John Murray Bliss:

Thursday, 16th January, 1800, at 1-2 past five o'clock in the afternoon, Mr. Street sent a message by Mr. Anderson to Mr. John Murray Bliss to meet the next morning at the Artillery Barrack gate at 7 o'clock to proceed to the ground for adjusting a difference. Capt. Stair Agnew waited on Mr. Street with Mr. Bliss' answer that he would rather meet him in an hour, as he had business which would call him elsewhere in the morning. Mr. S. replied in half an hour, if he pleased. It was then fixed that we should retire to dinner, and should afterwards proceed from Vanderbeck's. About

eight o'clock in the evening Capt. Agnew called on Mr. Anderson and proposed that Mr. Street should alter his message, which was in such strong and direct terms that it left Mr. Bliss no alternative. Mr. Anderson replied that he should not consent to the alteration, nor make the proposal to Mr. Street, as he was confident Mr. Street would not alter it, but told Capt. Agnew he might call on Mr. Street personally and propose it. He did so, and Mr. Street positively refused. We accordingly proceeded to the Court house, the place of meeting. The pistols were loaded by Capt. Agnew, who then proposed that the parties should submit themselves wholly to their seconds throughout the business, and that if the first shot took no effect, that the business should then terminate. To this Mr. Street refused, saying the seconds has no right to measure out satisfaction to him nor to prescribe anything but the mode of proceedings. The seconds then adjusted the distance nine paces. The principals then took their stations, after an objection made by Mr. Street to the apparent greatness of the distance being over-ruled, received the word and fired nearly together, but without effect. Mr. Street urged a re-loading of the pistols. Mr. Bliss said he was ready to go on. Capt. Blair and myself interfered, and insisted the business should go no further. Mr. Street insisted in strong terms he would have an apology or the blood of his adversary. Some altercations ensued, on which the principals were desired to leave the room, and when wanted should be called on. We agreed Mr. Street should not, nor had a right to renew hostilities. Upon giving Mr. Street an assurance on honour, I would agree to nothing short of an apology, he waived his demand of another shot. I was induced from the first to believe from Capt. Agnew that Mr. Bliss would apologize, but a mistaken point of etiquette prevented him. I proposed to Mr. Bliss with the consent of Capt. Agnew that if he did not mean anything personal to Mr. Street, he should say so. Mr. Bliss very handsomely acceded, upon which I informed Mr. Street Mr. Bliss would apologize to him, which he immediately did by saying that he did not mean to offend him, or to convey the least personal insult, nor to charge Mr. Street personally with the utterance of any falsehood to the jury on the cause they had tried that day; and everything being adjusted, the gentlemen parted apparently good friends.

(Sgd.) CAPT. ANDERSON.

CHAPTER XI.

HON. EDWARD JAMES JARVIS.

Munson Jarvis, the father of Edward James Jarvis, was born in Norwalk, Conn., 1742, and when he arrived at Parr Town, in 1783, was in his forty-first year. Munson Jarvis took an active part in civic, political and ecclesiastic affairs. At the opening of old Trinity Church, in 1791, he was one of the vestry, and one of the first Church Wardens, and at the organization of the City of St. John was a member of the City Council, and from 1803 to 1810, one of the representatives from the city and county of St. John in the legislature of the Province. He was a merchant, dealing chiefly in hardware, although the following document shows that he occasionally disposed of live stock :

SALE OF TWO SLAVES.

KNOW ALL MEN BY THESE PRESENTS, That I, Munson Jarvis, of the City of St. John, New Brunswick, for and in consideration of sixty pounds to me in hand paid on or before the sealing and delivery of these presents by Abraham DePeyster, of said city and province aforesaid, the receipt whereof I do hereby acknowledge, have bargained, sold, and by these presents do bargain, sell and deliver unto him, the said Abraham DePeyster (1), one negro man, named Abraham, and one negro woman, named Lucy. I, the said Munson Jarvis, my heirs and assigns, from and against all persons, shall and will warrant and defend by these presents the said negro man and woman

In witness whereof, I have hereunto set my hand
and seal the 15th day of July, 1797.

MUNSON JARVIS [L. S.]

In presence of us,
JOHN WARD,
RALPH M. JARVIS.

The arrivals from the old country to New Brunswick, for the first third of a century, were solely during the spring and fall, and the advertisements of the merchants changed only once a year. The first would announce the arrival of the spring goods, and six months later would give place to the announcement of the arrival of the fall goods, all goods to be sold for cash, bills of exchange, or country produce. As there were no banks or paper money, the circulation was largely Spanish dollars, the merchants keeping their valuables in an iron chest in their dwellings, which as a general rule were over their stores.

Munson Jarvis had three sons, Ralph M., William, and Edward James. The two former were clerks with their father, and at his death in 1825, at the age of eighty-three years, William and his partner, Ralph M. having previously been a member of the co-partnership.

The place of business of the firm was the South Market Wharf. The following advertisements appeared in the St. John "Gazette" on the death of Munson Jarvis:

ALL persons indebted to Munson Jarvis, Ralph M. Jarvis and William Jarvis, under the late firm of Munson Jarvis & Co., which expired on the 1st of May, 1812, are requested to take notice, that unless they make immediate payment their Notes and Accounts will be placed in the hands of an Attorney to collect.

RALPH M. JARVIS,
WILLIAM JARVIS.

St. John, December 24, 1825.

NOTICE.

As the firm of Munson and William Jarvis will be closed in April next, in consequence of the death of Munson Jarvis, all persons having any demand against the said firm are requested to present the same within the above mentioned time; and those indebted to make immediate payment to

WILLIAM JARVIS,

St. John, 24th December, 1825.

Surviving partner.

William Jarvis continued business at the old stand, South Market Wharf, while his brother established himself in business on the North Market Wharf.

Munson Jarvis had one daughter, who in 1802, married Major Robert Hazen, of the 60th Rifles. Major Hazen died at the residence of his father, Portland Point, in 1813, aged thirty-nine years, leaving one son, Robert F. Hazen.

Edward James Jarvis, the younger son of Munson Jarvis, was born in 1788. He went to England in 1813, to study law, where he remained for three years, when he returned to New Brunswick and was admitted an attorney, and practiced his profession at the City of St. John. On the death of George L. Wetmore, clerk of the House of Assembly, who in 1821, fell in a duel with George F. Street, Edward Jarvis was appointed by Gov. Smyth to the vacant office. On the death, in 1822, of Chief Justice Bliss, Gov. Smyth appointed Mr. Jarvis to the seat on the Supreme Court bench, rendered vacant by the elevation of Judge Saunders to the Chief Justiceship. The appointment was not, however, confirmed by the British government, and instructions were sent from Downing Street to the governor to place Solicitor General Botsford in the office. Failing to retain the judgeship, Mr. Jarvis lost no time in proceeding to England, to lay his case before the British government, and although unsuccessful in the immediate object of his mission; he obtained a judicial appointment at the Island of Malta. The following letter written to his friend, John Simcoe Saunders, (son of the chief justice), then in England, refers to his new field of labor:

MALTA, 30th November, 1824.

MY DEAR SAUNDERS (2),—

I can tell you nothing new or interesting about our little island. We are circumscribed within a narrow compass, a little world within ourselves. We do not feel that we have at all suffered from the great heat of this climate. For three months it was very great, but by taking the precaution of never venturing to expose ourselves to the hot sun we suffered no other inconvenience than that produced by the perpetual flow of the copious streams of perspiration. I never enjoyed better health than I have during my residence in Malta, and I may say the same of the ladies and the children. Take away the winds and I would not wish a better or more healthful climate. I am in receipt of a letter from Bainbridge. He writes, you had commenced your career and had gone one circuit, and although empty handed—*Qui Incipit*. I sincerely hope this may be your case. You have a steep hill to climb, but not a desperate one; patience and perseverance are two hand-maids now really serviceable, and more to be courted than any of the sex. I have no doubt, that with their assistance, before long, I shall read in the case of John Doe vs. Richard Roe, Mr. Saunders stated the case ably to the jury, etc., etc." Pray make my best regards to Mr. Chitty (3), and tell him I am sensible of his kindness, in so readily granting me the certificate required, when I received by present appointment. I would not willingly let the kindness of any friend go unacknowledged. Let me hear from you soon, and give me every article of intelligence that comes to your hand, and take it for granted it will be news to us.

Believe me, dear Sir,

Yours very truly,

E. J. JARVIS.

Judge Jarvis (5) did not remain many years in Malta. In 1827 he was appointed Chief Justice of Prince Edward Island. He was twice married; first, April 28, 1817, to Anna Maria, daughter of Dr. John Boyd, of St. John, N. B., by whom there was a family of eight children, three of whom died in infancy. She

died August 28, 1841. Secondly, in 1845, to Elizabeth, daughter of Hon. Robert Gray, a member of His Majesty's Council of Prince Edward Island. Two children were born from this marriage, one of whom died in infancy. The second, Mrs. Jarvis, died September 6, 1847. Chief Justice Jarvis died at Spring Park, Charlottetown, May 9, 1852, in his sixty-fifth year.

NOTES.

(1) The following notice taken from the St. John "Royal Gazette," refers to Mr. DePeyster:

Died 19th February, 1798, universally lamented, after a short and painful illness, Abraham DePeyster, Esq., aged 46 years, treasurer of the province, justice of the peace, captain on half pay of the late King's American regiment and colonel of militia. He leaves an amiable wife and five young children. He was an honest man, an affectionate husband, a tender and indulgent parent, a sincere friend, and a pious Christian.

In 1783, on the eve of the evacuation of New York, Mr. DePeyster married a daughter of John Livingstone, and their first home in New Brunswick was in the County of Sunbury, of which he was first sheriff. After the death of her husband, she returned to New York. In the inventory of the furniture of the estate, the piano was valued at ten pounds. In the old colonial days the DePeysters were among the first families of the City of New York, and today (1906) they have a place among the historic and wealthy "Four Hundred" of that great city.

(2) John Simcoe Saunders was the son of Chief Justice Saunders. He was Clerk of the Circuits until by a change in the law, in 1868, (31 Vic. Ch. 24), the Governor in Council was authorized to appoint a Clerk of the Circuit Court for each County in the Province.

While Mr. Saunders was in England he published, in 1828, the first edition of *Saunders on Pleading and Evidence*. There is a tradition that the work was really composed by Joseph Chitty, but for some reason Mr. Chitty did not wish his name to appear as the author, and had the work issued in the name of Mr. Saunders, who had studied in Chitty's office.

(3) Joseph Chitty is the well known legal writer. His name is as familiar to lawyers and those interested in legal subjects, as are the names of Blackstone and Story.

(4) Robert F. Hazen was born in 1803, and studied law in the office of his cousin, Ward Chipman, Jr., and in 1826 was admitted a barrister. In 1828 he married Joanna, daughter of Lieut.-Col. Morris Robinson, Assistant Barrack Master General in the British army, who died at Gibraltar in 1815, aged fifty-six years. Mr. Hazen held the office of Mayor of St. John, and on the death of Ward Chipman, Jr., in 1851, became residuary devisee of his large estate. For over thirty years his residence was the present Dufferin Hotel building, St. John, on the south-west corner of King Square and Charlotte Street. He died there in 1874, aged seventy-one years. Mrs. Hazen died in 1853. Their eldest son, Robert Morris, was captain in the 60th or King's Regiment. He died at Burmah in 1863, aged thirty-four years. He married a daughter of Alexander Grant, collector of customs at Saint Andrews; she was a granddaughter of Lauchlan Donaldson, at one time mayor of St. John. His second son, William, died at his residence, the old Chipman House, St. John, in 1881, aged fifty years, leaving a family. The youngest, Joanna, in 1870, married the eldest son of Chief Justice Ritchie, and on his death was again married, in 1882, to Surgeon-Major E. L. Street of the British Army.

(5) The following extracts are taken from a journal kept by Edward J. Jarvis, beginning in 1813, when he first started from New Brunswick for London, and entered upon the study of law, and now in the possession of his nephew, William M. Jarvis. He says:

On the 14th day of Jan'y, 1813, I embarked upon the Caledonian (Boag, Master), at the port of St. John, N. B., bound on a voyage to England, and on the 16th Feb'y following arrived in the Clyde, after a passage fraught with such terror and dangers as, perhaps, few who have experienced ever survived to recount. I remained at Greenock from the morning of the 16th to the evening of the 17th, when I took stage, and in a few hours arrived at Glasgow. I saw what was worth a stranger's observation at Glasgow (of which I have a short memorandum elsewhere, as also of what I observed at Edinburgh, &c.), in company with Ewing. I went to Edinburgh on the 20th, and remained at McGregor's Hôtel, in the new town, till the evening of Monday, the 22nd, and then took ye mail coach and arrived in London on Thursday morning, 25th February, being a distance of 399 miles from Edinburgh to London. I immediately joined Chipman in lodgings in Southampton Row, Bloomsbury, which I kept till the 19th of July, 1813; which five months have been spent, I sincerely hope, to less purpose than any period of time will be which I may yet have to come in London. In such a place as London, it requires no small portion of time to get the head settled and the mind composed—to abstract the attention from external objects and fix it upon the object of professional pursuits alone—to gain that most desirable and necessary qualification for a lawyer, a habit of abstraction and attention, regardless of the confusion surrounding on every side. This is not the attainment of a moment, but is a work of time and of perseverance, and even when in some measure acquired, to persist, to shun the temptations spread around to ensnare the weak and timid or unwary requires a degree of fortitude as well as circumspection, not always easy to attain or to preserve. To me the wonder is no longer, that so many err from the paths of rectitude, but that so many are able to maintain their purity unsullied. For myself try to look forward to what *may be*; confidence in my own powers, I have very little, further than the old adage will afford me,

Experientia magister stultorum, and I am free to confess I am already in some degree indebted to that useful monitor for lessons which I sincerely hope may not be disregarded. But there is a power beyond ourselves, and there I rest the arbitrium of my fate.

On July 19th, 1813, he writes: "I moved into Chambers, in the Inner Temple, which I hired for one year at fifty guineas of J. Hill, he paying taxes, etc.; agreed with Mrs. Nixon ye laundress for 9½ guineas a year, and the porter at one guinea a quarter." On the next day is the entry: "Began to read Gifford's *Life of Pitt*;" and on Saturday the 24th, he says: "Began Dalrymple on Tenures. The present week spent in a pretty assiduous attendance at Guildhall, at French, and occasional reading, affords but little room for particular observation. This evening unbent my mind at ye Lyceum." On Sunday 25th, he tells us that he attended divine service at the Temple Church, and that on that date a Gazette extraordinary was published, giving news from Canada as to the capture of York (now Toronto); he also refers to the attempt upon Sackett's Harbour, in which the 104th suffered much. On the 6th of August, 1813, he says: "Spent the day with Saunders and Chipman; gave C. Ossian's poems." On the 11th of August, he says: "I got on top of a coach with Chipman and went down to Canterbury, we passed through Deptford, Gravesend, Rochester, Chatham, &c.; at the last place an extensive fortification is constructed, principally subterranean. Many Russian ships of war lie at Sheerness—said to be very fine ships; one of them, a frigate has thirty-two brass cannon. The Russian officers are a rum-looking set of fellows. There is a fine castle at Rochester. The crops are uncommonly fine this season in every part of the country. There is a grand and commanding view of the whole country from every part of Shooter's Hill. Canterbury has 9,000 inhabitants. The

Cathedral is noble. The first part you enter was finished chiefly in the reigns of King John and Richard II. The second part is more ancient, and has one of the largest choirs in Europe. The third part is still more ancient; some remains still of what was built in the reign of Ethelbert, ye founder. Thomas á Beckett's shrine was destroyed by Henry VIII, the stones near where it stood are shown worn by the kneeling of ye pilgrims; the ancient chair of stone on which the Archbishops of Canterbury are to this day crowned, still stands there. The place where Thomas á Beckett was murdered in near the entrance of the Dean's chapel. There is a small private chapel of Henry VII. The font, given by one of the Archbishops, is the finest in Europe. The windows of painted glass are very ancient and very fine. The whole has an appearance of grandeur and sublimity. The Archbishop attends once a year, in September—one of ye prebends or minor canons attends divine service every day. The coat of mail in which ye Black Prince fought ye battle of Crecy, hangs in one part of ye Cathedral. There is a monument of oak, upwards of 600 years old, not in the least decayed, and less worn by time than the stone on which it rests." He also paid a visit to Dover, and on the 23rd of August, 1813, he says: "I visited the heights today, a gentleman and lady with me, upon the strength of my pass. The works are chiefly subterranean, for Barracks, &c., surrounded with a dry ditch and strongly fortified with cannon at every embrasure, etc. Below ye surface of ye ground in some places 150 feet, and in extent 400. The whole is about 600 feet above ye level of ye sea, near 200 feet higher than ye castle cliff." On the 25th of October, 1813, he says: "Evans introduced me to Chitty this morning. I have engaged for a year, and paid him fifty guineas down," and then on the following day, he makes this entry:" I gave

Chitty my note of hand for fifty guineas, payable in six months with interest, and this day commenced my year with him." On the second of November of the same year, he says: "In the evening, I attended the Forensic Society." "Question, Husband dies seized in fee leaving a wife. His heir enters and after forty years undisturbed possession dies, having devised all his real estate to A. B. The widow after the death of the heir claims dower and arrears from the death of her husband, can she enforce her claim?" November 31st, he says: "At Temple Church, Saunders called, we dined with Simpson, and met Trevillian, the barrister, rather an eccentric man, of good family and acquaintance. He knew Kirke White well at Cambridge, who was extremely studious, but unfortunately deaf, and a great jealousy against him excited by a tutor a rival of his own tutor. Chief Justice Leonard called this morning and offered to introduce me at the Royal Institution, when I should find leisure to attend the public lectures there." And on the 9th of December he says: "Dined with Lieut. Marryatt, R. N., and his brother, No. 6 Gt. George St., Westminster, a most superb house, &c., &c., nephew of Barrister and son of an M. P." On January 14th, 1815, he writes: "This day completes two years since I embarked at St. John," and on the 25th day of the same month, he says: "On Sunday last, dined at Colonel L's, with Lieut. Beer, Royal Navy, from New Brunswick." On Monday dined with Beer at his lodgings in Robert Street, Adelphi.

CHAPTER XII.

HON. WILLIAM BOTSFORD.

Amos Botsford, the father of William, was a native of Newtown, Connecticut, and was graduated at Yale College in 1763. He was bred to the profession of law. At the close of the Revolutionary War he embarked at New York for Annapolis Royal, Nova Scotia, with five hundred others under the convoy of His Majesty's ship "Amphitrite," twenty-four guns, Commander Briggs. Mr. Botsford was one of the commissioners appointed by Sir Guy Carleton at New York to locate the Loyalists. He obtained for himself a fine tract of land at Westcock in the County of Westmorland, New Brunswick, and settled there. On the organization of the province he was appointed clerk of the common pleas, and surrogate for the county of Westmorland, and at the first and other subsequent elections, during his life, was one of its representatives, and was chosen speaker of the House of Assembly. Mr. Bostford married a daughter of Joshua Chandler of New Haven, Connecticut. In consequence of adhering to the side of the Crown during the revolution, Mr. Chandler's losses were heavy amounting to thirty thousand dollars. In crossing the Bay of Fundy to meet the commissioners at St. John, appointed to adjust the losses of the Loyalists, the vessel was lost in a snow storm on March 9, 1787, near Musquash, in the city and county of St. John, when Mr. Chandler, with his son William, and his two daughters, perished from cold and exhaustion. An incident in the life of Amos Botsford reveals a noble character. In 1802, Mr. Alpheus Morse, of Cumberland, Nova Scotia, ar-

ranged for his son, James, to go to his relations in Massachusetts, to study law. On his way he met Amos Botsford, who, on learning he was a nephew of the Rev. Dr. Ebenezer Morse, of Boylston, a fellow student at Yale, invited him to study in his office. Young Morse returned to Cumberland, and having obtained the consent of his parents, returned to Mr. Botsford, remaining in his office for five years. Mr. Botsford not only charged no fee, but handed over to him his business in Cumberland County. In 1812 Mr. Botsford went to St. John for medical treatment, and died there in his seventieth year, leaving a daughter and son. The daughter married Stephen Millidge, Sheriff of Westmorland, and one of Stephen Millidge's daughters married the Honorable Edward B. Chandler. William Botsford, when his father came to New Brunswick, was in his eleventh year, and years later he reaped a reward from the kindness shown by his father to James S. Morse, the young student from Cumberland County. William Botsford was born at New Haven in 1773. He completed his education at Yale College, where he held a first place in character and scholarship, taking his degree in 1792. He studied law at St. John in the office of Attorney General Jonathan Bliss. In 1795 he commenced practice at St. John. When the Honorable Gabriel G. Ludlow became President and Commander in Chief, in 1803, on Governor Carleton leaving for England, Mr. Botsford succeeded him as Judge of the Court of Vice Admiralty, which position he held till 1808 on his removal to Westmorland, with his family, so as to be near his father, who was advancing in years, and also in consequence of extensive business interests in that part of the province. On the death of his father, in 1812, William Botsford was elected to fill his seat in the House of Assembly for Westmorland County. When Solicitor-General Bliss was elevated to the

Bench in 1816, Mr. Botsford was appointed Solicitor-General, and on the appointment in 1817 of John Robinson, one of the members for the city of St. John, to a seat in His Majesty's council, Mr. Botsford was chosen Speaker of the House. At that time he was the only member of the Bar in the legislature. At the close of its third session, in 1819, the House of Assembly was dissolved by Governor Smyth in the following speech:

*Gentlemen of the Council and
Gentlemen of the Assembly:*

Having passed such Bills of the present Session as I have agreed to, with one exception, I have only to express my hopes that the Acts may prove advantageous to the interests of the Province.

Gentlemen of the Assembly:

It is with regret that I have to remark that hardly any provision had been made for those services which have been particularly recommended by me to your consideration. And it is with great concern that I notice your persistence in a measure to which your attention has been recently called, which conduct I cannot suffer to go unnoticed, consistent with the duty I owe to my sovereign. The only mode which you have now left me to do this, is by dissolving this General Assembly.

The President of the Council, then, by His Excellency's command, declared the General Assembly to be dissolved.

The following reference to this event was made by the editor of one of the newspapers of the day, who was evidently more in dread of the consequences of the full criticism of a gubernatorial act than most editors of the present day.

Several causes are assigned for the sudden and early dismissal of the House of Assembly. As this is a delicate subject, we shall content ourselves for the present, with announcing the fact of the dissolution to our readers, and suggest one leading cause, the Resolution of the House condemning the exaction of the Governor and Council, of one shilling per ton, on all pine timber manufactured in the province.

From the appeal to the country, the government reaped no advantage, for the members in opposition were all returned. The tenure of the new House was the shortest in the annals of the province, for it was brought to an end at the close of the first session, by the demise of King George III., when the following were elected, to a House continuing for the full term of seven years.

St. John County:

Ward Chipman, Jun.,
Andrew S. Ritchie,
John M. Wilmot,
Charles Simonds.

York County:

Peter Fraser,
John Allen,
Stair Agnew,
John Dow.

Charlotte County:

Hugh MacKay,
John Campbell,
Joseph N. Clark,
Peter Stubbs.

Westmorland County:

William Botsford,
Rufus Smith,
Joseph Crandall,
Benjamin Wilson.

Kings County:

David B. Wetmore,
John C. Vail.

Queens County:

Samuel Scovil,
William Peters.

Sunbury County:

Elijah Miles,
Amos Perley.

Northumberland County:

Richard Simonés,
Hugh Munroe.

City of St. John.

Harry Peters,
Hugh Johnston, Jr.

Speaker: William Botsford.

Clerk: George L. Wetmore.

Chaplain, Rev. James Somerville.

Of the twenty-six members, thirteen took their seats for the first time. The legal profession was represented by William Botsford and Ward Chipman, Jr. At this session, the following message was received from his Excellency the Lieutenant Governor:

MONDAY, 11th February, 1822.

The Lieutenant Governor is much gratified to have it in his power to present to the House of Assembly, full length

portraits (1) of their late Majesties, George the Third, and Queen Charlotte, feeling assured from the loyal principles which instigated the vote of the last session for providing the King's picture, that such will be acceptable to the House.

On the elevation, in 1823, of Judge Saunders to the Chief Justiceship, the Bench and Bar expected the appointment of Mr. Botsford to the judgeship. The surprise was great when it was learned that Governor Smyth had appointed Edward James Jarvis to the seat on the Bench. It was at this juncture that it was to be proved that "the bread cast on the waters was to be found after many days." Sir James Kempt, then governor of Nova Scotia, was on a visit to Cumberland County, the guest of Mr. Morse, who years before had been received by Amos Botsford into his house and office. His Excellency was driven by his host across the marshes to dine with Mr. Botsford, then the first commoner of New Brunswick. Mr. Botsford there mentioned to Mr. Morse that Governor Smyth had forwarded the name of Mr. Jarvis to the home government for confirmation to a judgeship, against the wishes of the chief justice and others. Mr. Morse interested himself in the matter and wrote to the Duke of Wellington, pressing the claims of Mr. Botsford, with such good judgment and vigor, that the latter eventually received the appointment to the seat on the bench vacated by the elevation of Judge Saunders to the chief justiceship. With the session of 1823, Mr. Botsford closed his connection with the House of Assembly, father and son having represented Westmorland County for thirty-seven years. In accordance with custom, his elevation to the Bench was followed by his appointment to a seat in His Majesty's Council.

The following gentlemen of the Bar were students in William Botsford's office, viz: Charles D. Roach, Edward B. Chandler, William End, Abel S. Gove, John W. Weldon, and William Wiley.

At the St. John circuit, August, 1827, Judge Botsford presided. In his charge to the jury he said:

The crimes in the Sheriff's Calendar were: Assault and battery, grand larceny, counterfeiting and arson. His Honor alluded in a very delicate and tender way to the poverty and distress which led to many of these offences, and expressed a hope that the time was not far distant when a different and better system should be adopted for the prevention and punishment of crimes. (2) He never wished to see the criminal code become more sanguinary. He expected the day was near when our legislature would see the necessity of providing a provincial penitentiary, in which persons might be kept to hard labor and may be able to support themselves without being chargeable upon the public.

The crown business was conducted by Attorney-General Wetmore, his last appearance at a St. John circuit, where for over a third of a century he appeared as one of the Bar. At this circuit, a case of considerable importance, and involving somewhat the Masonic fraternity, came before the court. It was a case of libel in which H. N. H. Lugin was plaintiff and Samuel Stephen, defendant. Attorney-General Wetmore and Solicitor-General Peters appeared as counsel for the plaintiff, and Robert Parker and George Frederick Street as counsel for the defendant. Mr. Lugin introduced and carried on a suit against Mr. Stephen on behalf of William Gillies, and contrary to his wishes. As both were Free Masons Mr. Stephen in conforming with the constitution of Masonry preferred several charges in writing to the Lodge, of which both were members, and in consequence of this charge Mr. Lugin brought this action. The document complained of was identified in court by the Master of the lodge. The defence did not attempt to justify the libel, but relied on there not being any publication, the charges alluded to having been produced only in the lodge to which the plaintiff belonged, and being in strict conformity with the regulations of Masonry and it not appearing in evidence that Mr. Stephen had ever

published the charges in any other place. The case was a novel one, as nothing of the kind in which the constitution of Masonry was so much involved could be found in the law books, so there was not upon record any precedent to guide the parties to a decision. As the constitution of Masonry is not recognized by the law of the land, the judge charged the jury that the exhibiting the charges before the lodge in which a number of persons were present, though done in conformity with the rules of the institution, was a publishing in the eyes of the law. In conformity with the charge the jury found a verdict in favor of the plaintiff with damages one penny. It would appear, however, from the following correspondence, that the defendant suffered no personal loss in consequence of the verdict.

ST. JOHN, N. B., 19th Dec., 1827.

MR. SAMUEL STEPHEN,
SIR,—

The members of Saint John Lodge, No. 29, and those of Union Lodge, No. 38, as well as other Masonic brethren, view with regret the occurrence of the late misunderstanding which took place between yourself and one of the members of Albion Lodge, No. 52. Being aware of its nature, they feel convinced that the matter ought to have been settled within the walls of a Lodge room.

Finding, however, that you have been forced into a Public Court of Justice (contrary to the spirit and constitution of Masonry) in which the jury awarded damages against you; the above mentioned Lodges have appointed us as a joint Committee to present you with the sum of fifty-seven pounds, seven shillings and seven pence, being the amount of expenses incurred by you in defending the action.

We have therefore to beg your acceptance of the above amount to be applied to the purpose referred to.

We are, Sir,

Your most obedient servants,

BENJAMIN F. MARSH,
JAMES ROBERTSON, JUN.

To which the defendant replied as follows :

GENTLEMEN,

I have the honor to acknowledge the receipt of your note dated the 19th instant, enclosing the sum of fifty-seven pounds, seven shillings and seven pence.

To receive from so respectable and numerous a body of my fellow citizens, such a marked proof of their approval of my conduct, in the case to which it refers, is very gratifying. I request they will receive my sincere thanks, and believe that while I live, and have the honor to belong to such a venerable institution, it will ever afford me pleasure to aid its benevolent designs, and to know that its members keep within the line so clearly prescribed by its rule.

May harmony ever prevail, and every virtue cement them.

It may not be improper on this occasion, to state, that immediately after the case to which you refer, had been tried, a Committee of the Special Jury waited upon me, stating that that body had unanimously resolved to present me with the amount of their fees, as jurors—say three pounds. They at the same time expressed their regret that the law in its definition of this and similar cases, prevented them from awarding the costs of court to be paid by the plaintiff.

The following is a statement of the costs and consequent expenses incurred in this case, viz.:

H. N. H. Lugin

vs.

Samuel Stephen.

Costs of Court as per Bill, ...	£32	1	7
Retaining and other fees, ...	14	0	0
Expenses procuring evidence &c., ..	10	5	0
Costs of defence, ...	4	0	11
Damage claimed £1000—Do awarded,	0	0	1

60 7 7

Cash received from the twelve
special jurors, ... 3 0 0—£57 7 7

To you, gentlemen of the committee, I tender my best wishes, and with sentiments of respect subscribe myself,

Your very obedient servant,

SAMUEL STEPHEN.

To Messrs.

B. F. Marsh &

James Robertson, Jun.

St. John, N. B., Dec. 24th, 1827.

While therefore the verdict was but one penny, the costs in court, as appears from the foregoing bill, were very considerable, yet Mr. Stephen was not called upon to pay, as his brethren of the lodge stood between him and the judgment of the Court.

In 1836 Judge Botsford conceived a desire to retire from the Bench and wrote to Sir Archibald Campbell, the Governor, with reference thereto as follows:

SACKVILLE, September 6, 1836.

In April, 1823, I had the honor of being promoted to the Bench of the Supreme Court of this Province, and from the period of my appointment to the present time I have, without any interruption from sickness or absence, endeavoured faithfully to discharge the important and arduous duties of an assistant Justice. Being now of the age of sixty-three years, and feeling some of the infirmities that usually attend persons in advanced life, I am conscious of their effect, and therefore beg leave to tender the resignation of my seat upon the Bench, but with such retired allowance as His Majesty may graciously be pleased to grant. It was not without great reluctance that I came to the determination, which will deprive me of the great gratification I felt in being the public servant of an indulgent government, and for the reason that it will impair the means which were and still are essential to the support, education and settlement of a large family. No personal interest ought to interfere when the public interests demand the sacrifice. I beg leave to submit for the consideration of His Majesty's Government, that in the year 1803 I was appointed Judge of the court of Vice Admiralty for the Province, which office I held until my removal from the City of St. John in the year 1807, when I sacrificed it. No salary was attached to the office and the fees and emoluments did not average forty pounds per annum. In 1816, I was appointed Solicitor General, and continued in office until my appointment to the Bench, the only emolument I derived from this office was the legislative grant of fifty pounds per annum. I was made an assessor in the Court of Chancery in 1823, and from that time constantly attended the sittings of this court, without any emolument or fee whatever. In the last four years I have presided in the Court of Governor and Council, for hearing and determining causes relating to marriage and divorce as Vice-President, without any salary or emolument. In 1823, I was appointed a member of His Majesty's Council,

and continued in the discharge of the duties of that high and responsible situation until 1834, when my resignation was accepted. In addition to the above I beg leave to mention that in 1817, I was elected Speaker of the House of Assembly, and continued as such until my promotion to a seat in His Majesty's Council.

I have the Honor,

To His Excellency

WILLIAM BOTSFORD.

SIR ARCHIBALD CAMPBELL.

His Excellency having transmitted this communication received the following despatch :

DOWNING STREET, 31 October, 1836.

SIR,—

I have the honor to acknowledge the receipt of your dispatch of the 12th ult., enclosing an application from Mr. William Botsford, the senior Puisne Judge of New Brunswick, who is desirous of retiring from his judicial duties upon a pension being assigned. Before this communication reaches you, you will have received my dispatch of 5th September last. It will be obvious to you, that the Financial arrangement which you are instructed to submit for the consideration and sanction of the Provincial Legislature, renders it impossible for me to advise His Majesty to place any new charge upon the crown revenues of New Brunswick; but I am commanded by the King to direct you to recommend to the Assembly in the strongest terms, such a grant as will enable His Majesty to make provision for Mr. Botsford's retirement. That the Assembly will give a ready assent to that position I am bound to believe, from the assurance you give of the universal satisfaction which the measure would produce.

I have, &c.,

SIR A. CAMPBELL, G. C. B

GLENELG.

The question of a retiring allowance was never brought before the Legislature, the Judge continuing in the discharge of his judicial duties. Nine years later, Judge Botsford found it impossible to continue in office for reasons assigned by himself, and on this occasion the following correspondence ensued :

SIR.—

SACKVILLE, 6 October, 1845.

I have the honor herewith to enclose the resignation of my seat upon the Bench of the Supreme Court, and should it meet

with your Excellency's approbation will thank you to submit the same for the consideration of Her Majesty.

My object is to retire with a pension, and my hopes are, that Her Majesty will graciously be pleased to make some provision for my retirement out of the surplus of the Civil List Fund. May I be permitted to ask of your Excellency your influence and support to promote the object I have in view. I now beg leave to add, when asked by Sir Archibald Campbell, as to the amount of the pension I required or expected, I told him that I would be satisfied with three hundred pounds, sterling, and he was pleased to say, that was sufficiently moderate.

Being now in the 75th year of my age, I find my infirmities, particularly that of deafness, have so increased that in justice to myself and for the public interest, I ought to retire from public life; I therefore most respectfully beg leave to tender the resignation of my seat upon the Bench, with such retired allowance as Her Majesty may graciously be pleased to direct.

I have &c.,

SIR WILLIAM COLEBROOK,
Lieut.-Governor.

W. BOTSFORD.

The following was the reply of Colonial Secretary:

SIR,—

I have received your dispatch of the 13th October last, communicating the resignation of Mr. Botsford of his office of Senior Assistant Justice of the Supreme Court in New Brunswick, and proposing that some provision for his retirement may be made from the surplus Civil List Funds of the Province. I have to acquaint you that the Queen has accepted Mr. Botsford's resignation, and has been graciously pleased to command me to signify to you Her Majesty's regret that Mr. Botsford should no longer be able to continue in that career of public service, to the value of which you have borne such high and honorable testimony. It would therefore have afforded me peculiar satisfaction to have advised the Queen, in compliance with your recommendation, to grant to that gentleman during the rest of his life a pension charged on the Civil List Fund of New Brunswick.

The compact between the Crown and the Legislature must be so construed as to deprive the Queen of making any such appropriation as you suggest, hence the claim of Mr. Botsford must be presented to the Assembly.

Yours,

STANLEY.

SIR WILLIAM COLEBROOKE,
Lieut.-Governor.

It has been stated that during the twenty-two years of judicial work, Judge Botsford was never called upon to pass the sentence of death upon a fellow being; this is most remarkable as for a period of that time there were many capital crimes which are not so now.

A meeting of the members of the Bar was held at Fredericton, February 7th, 1846, in the Province building, to take into consideration the retirement of Judge Bostford from the Bench. There were present Attorney-General Peters, William Tyng Peters, William B. Kinnear, Daniel L. Robinson, Edward B. Chandler, William End, Charles P. Wetmore, John W. Weldon, William Wright, William Carman, John M. Robinson, Andrew Barbarie, James W. Chandler, Robert L. Hazen, Lemuel A. Wilmot, Charles Fisher, Charles A. Harding, Richard M. Andrews, William Jack, Alexander Campbell, George F. N. Minchin, George D. Street, David S. Kerr, John H. Gray, William J. Ritchie, George F. Thomson, George Lee, jun., John C. Allen, Theophilus DesBrisay, James E. Berton, James J. Kaye, Colin J. Allen, Andrew R. Wetmore, and Humphrey T. Gilbert. The Attorney-General was in the chair and read the draft of the address from the members of the Bar to the Honorable William Botsford, late senior justice of the Supreme Court. On motion of the Honorable William B. Kinnear, seconded by William Wright, it was resolved unanimously that the same be adopted and presented to His Honor. It was further resolved that William B. Kinnear, William Wright, John M. Robinson, John H. Gray and William J. Ritchie present the same. This resolution was signed by Charles J. Peters, Attorney-General, as chairman, and by James J. Kaye as secretary. It was arranged in conference with Judge Botsford that the address be presented at St. John, the seventeenth day of February being the day

appointed. The committee on that date, with a large number of the Bar, met His Honor at the St. John Hotel, when the Hon. William B. Kinnear read the following address :

To The Honorable William Botsford, late senior Justice of the Supreme Court of New Brunswick :

The members of the New Brunswick Bar embrace this first occasion of their assembly together since your Honor's retirement from the Bench, to convey to your Honor a cordial and united expression of their respect; and while they deeply regret that retirement, they cannot but appreciate the high and honorable feelings which prompted an act so generous and disinterested.

The Bar recall with pride and satisfaction your long and honorable course as a distinguished member of their body. As Speaker for many years of the House of Assembly of this Province, and a bright ornament of that Bench which so justly commands the esteem and veneration of all classes.

Nor can they in noticing your Honor's just claims to public gratitude, forget the unvarying urbanity and kindness which have ever marked your private intercourse with the members of the Bar, and which added to the active benevolence of your whole life, have secured an attachment on their part which previous years have only served to strengthen, and which future years cannot dissolve.

To this address His Honor made the following appropriate reply :

Gentlemen of the Committee :

I feel grateful for this Address, and gratified that the motives which induced my resignation have been appreciated by the members of the New Brunswick Bar. To retire from the Bench when the harmony was uninterrupted, and attached as I am to my brethren, not merely from the ties formed by official duties, but by the bond of friendship and profound esteem—to interrupt, I will not say to sever, the associations and friendship which in my intercourse with the members of the Bar have been the growth of half a century—to commence life, as it were, are subjects of painful consideration and reflection. A sense of public duty compelled me to make the sacrifice, and I rejoice that the public good will be promoted by the ability, knowledge and integrity of my successor.

In my intercourse with the members of the Bar I ever

wished to be considered as one who was deeply interested in their honor and prosperity. From them I have always received the kindest attention and indulgence.

My fervent wishes are, that in the pursuit of our honorable profession, so mixed up as it is with the affairs of men, and so necessary for the protection and defence of the injured and oppressed, the members of the New Brunswick Bar may ever be distinguished for that moral fortitude which is derived from religion.

Having passed the age allotted to man, my life must be drawing to a close. Whatever the continuance may be, it will be cheered by the recollection that when I retired from the Bench, I carried with me the esteem and attachment of the members of the New Brunswick Bar.

W. BOTSFORD.

The presentation of the address was followed by Judge Botsford inviting the members of the Bar to a sumptuous lunch, intermingled with toasts and speeches appropriate to the occasion.

The following message from the Lieutenant Governor, Sir William Colebrooke, to the House of Assembly, in the session of 1846, and the action of the House in regard thereto, refers to the proposed retiring allowance asked for by Mr. Botsford.

Her Majesty, having been graciously pleased to accept the resignation of the Honorable William Botsford, the senior assistant justice of the Supreme Court, and in consideration of his long and faithful service, it is Her Majesty's command that the Lieutenant Governor should signify her intention, with their concurrence, to grant to Mr. William Botsford an allowance to be charged to the Civil List Fund.

On motion of Mr. John R. Partelow :

Resolved, As the opinion of this committee that in consideration of the long and faithful service of the Hon. William Botsford, the late Senior Assistant Justice of the Supreme Court, and of the highly honorable and elevated feeling which prompted his retirement, the House should most cordially respond to the beneficent wishes of Her Majesty the Queen, by concurring in a grant for a superannuation allowance, during his life, to be charged to the surplus Civil List Fund; and that the House should address His Excellency the Lieutenant

Governor, praying that His Excellency would be pleased to carry its assurance to Her Majesty, to be laid at the foot of the Throne, in order that the gracious intentions of Her Majesty may be carried into effect.

To this the following was moved in amendment :

Resolved. As the opinion of this House, that the allowance of a retiring pension to public officers cannot be justified on any system of sound policy, and is uncalled for in a new country like New Brunswick.

The amendment was adopted by a vote of fourteen to thirteen, defeating not only the just expectations of Mr. Botsford, but the expressed wishes of the Queen.

Mr. Botsford evidently keenly felt the disappointment by reason of the refusal of the House of Assembly to grant him a retiring allowance, and he addressed a communication to Lord Grey, then Colonial Secretary. Lord Grey, in return, communicated with Lieutenant Governor Colebrooke in respect of the matter, as the following message and correspondence indicate :

Message to the House of Assembly, 5th April, 1847 :

The Lieutenant Governor communicates to the House the copy of a dispatch which he has received from the Secretary of State for the Colonies, in reference to an appeal to His Lordship from the Honorable William Botsford, whose claim to superannuation allowance, in consideration of his long and faithful services as a Judge of the Supreme Court, Her Majesty has been prepared, with the concurrence of the House, to grant from the surplus of the Civil List Fund.

The dispatch communicated by this message is as follows :

DOWNING STREET, 19th January, 1847.

SIR,—

I have read with very lively concern the letter to myself from Mr. Botsford of the 11th of December, 1846, accompanying your dispatch of the 23rd of that month (No. 117). Lord Stanley obviously accepted Mr. Botsford's resignation under the conviction that the claims of that gentleman to a retired allowance at his advanced period of life and after so long a course of honorable public service in so high and eminent a

station, would be favorably received by the legislature of New Brunswick; nor do I doubt that if his Lordship had regarded their concurrence in such a grant as questionable he would have directed that the resignation should not be actually made until that question had been set at rest. To have taken such a precaution might indeed have appeared to imply some unbecoming distrust of the justice and liberality of the Assembly, and for that reason, as I presume, Lord Stanley omitted to take it. The omission is now irreparable, except by a reconsideration on the part of the Local Legislature, of their refusal of the proposed grant. Her Majesty has, by the Civil List arrangement, been entirely divested of all resources for satisfying any such demands on the justice or liberality of the Crown. To the Assembly therefore, the case must be again referred with as strong a recommendation of the claim to their favorable notice as it may be possible to address to them. I am convinced that if the case had been understood by that House, as it is now represented by Mr. Botsford and by yourself, they would not have declined to accede to his request. A repetition of their refusal would in any future case render impossible the voluntary resignation of any judge, however much age or infirmities might have disqualified him for his judicial duties. The saving of a charge of £300 per annum to the Local Treasury, or even the habitual saving of any such charges, would be a very inadequate compensation for the injury which the public at large would sustain from the continuance on the Bench of men who have survived the power of discharging aright that most important and arduous trust.

I have, &c.,

(Signed) GREY.

Lieutenant Governor,

SIR WILLIAM COLEBROOK.

Nine years after this Charles Fisher, one of the members for York, in referring to this matter said, "He remembered Judge Botsford's patience and kindness, and with what fatherly affection he treated the young members of the profession, on their first entrance into court. He had been taught to look on him as one of the fathers of the country. There was an urbanity in his manners and sweetness in his disposition. It was with pain he had felt himself con-

strained to oppose any retiring allowance." Judge Botsford spent the evening of life at Westcock, Sackville. His first great sorrow after his retirement was the death of Mrs. Botsford in 1850, after an unclouded union of forty-eight years. He survived her fourteen years, gently passing to his rest in 1864, at the patriarchal age of ninety-one years. He was of commanding presence, with benevolence as a marked feature in his character. He left eight sons, and one daughter. The daughter was the wife of the Honorable Robert L. Hazen. Three of his sons, George, Chipman and Bliss, were members of the Bar. Three held seats in the House of Assembly, Hazen, Bliss and Chipman, and one, Amos E., was a member of the Legislative Council, and afterwards of the Senate of Canada. George was for years clerk of the Legislative Council of New Brunswick. Bliss, like his father and grandfather, was speaker of the House of Assembly, and at one time Surveyor-General, and, at his death, Judge of the County Courts of Westmorland and Kent. Hazen, the eldest son, looked after the fine estate at Westcock, with its spreading marshes in the centre of one of the richest agricultural districts, and Amos E., (5) the second son, also devoted much of his attention to agriculture. LeBaron was a prominent medical man in St. John, and Blair was for a long number of years High Sheriff of the County of Westmorland, and, at the time of his death, warden of the Penitentiary at Dorchester.

NOTES.

1. Much speculation has at various times been indulged, as to what artist painted the portraits of King George III, and Queen Charlotte in the Legislative Assembly at Fredericton. The supposition that they are from the brush of Sir Joshua Reynolds must

be dismissed as wholly inadmissible. There is no evidence to warrant it, and the circumstances point in another direction. The strong probability is that they were painted by Allan Ramsay, who for years was a great favorite at Court, and principal painter to the King. In a sketch of this artist by Cunningham, in his "Lives of Eminent Painters and Sculptors," volume 4, p. 36, is the following statement; "With the accession of George the Third came the golden days of Ramsay: the great merit of Reynolds was but partially acknowledged, for, from some unexplained cause, the King neither liked him as a man, nor admired him as an artist: the wind of Court favor, therefore, filled Ramsay's sails, and he obtained distinction as the first, where he at best deserved notice as the second." But this was not all, for in 1767, Shakelton was removed from his position as Court painter, and Ramsay was appointed in his place. The appointment gave increase of honor and work to Ramsay. His studio was thronged by the titled and the influential, and he was compelled to employ five assistants. The writer already quoted from, speaking of these assistants, says: "Their names prove how much foreigners mingled with natives in the great manufacture of portraiture in those days: 1. Mrs. Black, a lady of less talent than good taste; 2. Vandycke, a Dutchman, allied more in name than talent with him of the days of Charles the First; 3. Eikhart, a German, well acquainted with draperies; 4. Roth, another German, who aided the subordinate parts; and 5, David, commonly called Davie Martin, a Scotchman, and the favorite chief draughtsman and helper. One Vesperies, a foreigner, was occasionally employed to paint fruit and flowers. Such was the desire to have a portrait by Ramsay, that he was fain to employ anybody to aid in advancing his pictures. He invariably, however, painted the

head with his own hand; at least it was not till his pupil Philip Reinagle began to distinguish himself that he trusted any thing of that order to the skill of others."

It is stated that His Majesty invariably presented portraits of himself and the Queen to all his ambassadors and governors of colonies, and that in consequence, Ramsay had a busy time manufacturing these royal effigies. Ramsay met with a painful and unfortunate accident in the dislocation of his right arm, which seriously interfered with his professional work. Seeking health, he in consequence made a third visit to Rome, leaving to his pupil Philip Reinagle an order to complete during his absence "fifty pairs of Kings and Queens at ten guineas each," which was afterwards increased to thirty guineas. It took six years to complete this order, and Reinagle's imitation of Ramsay's style was such that the work of the pupil could not be distinguished from that of the master. It is quite evident the portraits at Fredericton are from Ramsay's brush, or from that of Reinagle, with subordinate parts filled in by assistants. The writer has seen the portraits of the King at Oxford, England; in the National Gallery, London; at Halifax, N. S.; and at Fredericton, and the great similarity in treatment is almost conclusive evidence they are by the same artist.

2. Great changes have since Judge Botsford's time been made in the administration of our criminal law. To Sir Samuel Romilly is largely due the changes for the better brought about in Great Britain. In 1810, he moved for, and obtained leave to bring into the House of Commons three bills to repeal the Acts 10 and 11, Will. III, c. 23; 12 Ann St. 1, c. 7, and 24 Geo. II., which punished with death the crimes of stealing privately in a shop goods of the value of five shillings, and of stealing to the amount of forty

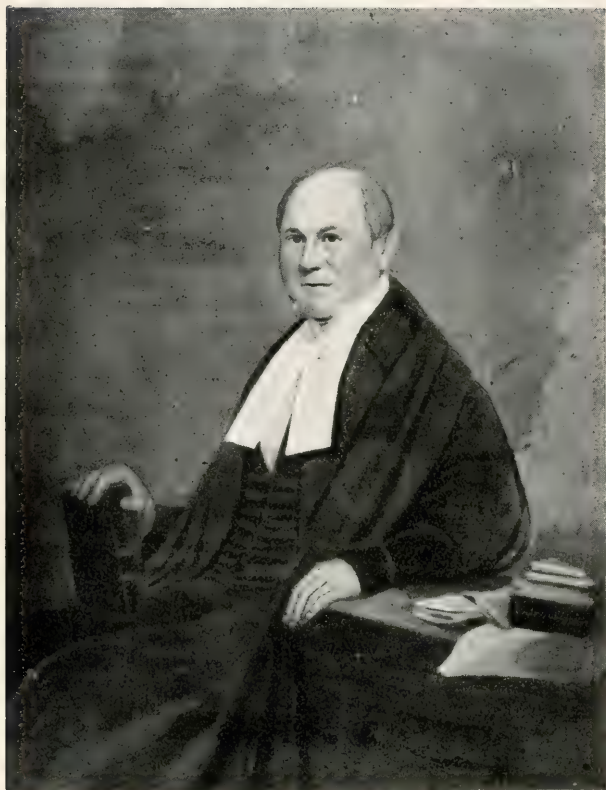
shillings, in dwelling houses, or on board vessels in navigable rivers. When the Bill to repeal the death penalty for stealing to the amount of five shillings from a shop came before the House of Lords it was rejected by a majority of thirty-one to eleven. No less than seven prelates voted against this humane amendment of the law, the Archbishop of Canterbury, the Bishops of London, Salisbury, Ely, Hereford, Chester, and an Irish Bishop. The administration of the criminal law, both in the mother land and the colonies, was based on savagery and vindictiveness. Now, happily, better methods prevail. We reach out by milder methods to reclaim, and the results justify the enlightened administration of present times.

3. Of the number of the Bar present at the meeting to prepare and present the address to Judge Botsford, seven subsequently became Judges, viz.: L. A. Wilmot, W. J. Ritchie, John C. Allen, John Wesley Weldon, Charles Fisher, A. R. Wetmore, and John H. Gray, the latter of the Court of British Columbia. Sir William J. Ritchie was raised to the Chief Justiceship of New Brunswick, and on the organization of the Supreme Court of Canada became a Judge, and subsequently Chief Justice of that Court. Sir John C. Allen, on the translation of Chief Justice Ritchie to the Supreme Court of Canada, became Chief Justice of New Brunswick.

4. Mrs. Botsford, was Sarah Hazen, daughter of William Hazen, and at the time of her marriage with Mr. Botsford was the widow of Thomas Murray, who was admitted an Attorney in 1796, and died in 1797. (See ante, page 222.) She was born in 1776, the year her parents removed to Portland Point. When the Loyalists arrived she was in her eighth year. To her the sight in the harbor on arrival and their landing would never be forgotten. As the troops at that time

were stationed at Fort Howe, military scenes and martial music would brighten her early years.

5. Three of the sons, Hazen, Edwin and Charles, were born in St. John. The second son, Amos Edwin, was born September 25, 1804. He removed with his parents to Sackville in 1807, and resided there during the rest of his life. From 1833 to Confederation in 1867, he was a member of the Legislative Council of New Brunswick, and from 1838 to 1840 a member of the Executive Council. In 1836, he was a commissioner with E. B. Chandler to settle the boundary dispute with Nova Scotia, and in 1839 he was a delegate to Washington in respect of border difficulties, also a delegate to Quebec during the Governorship of Lord Durham, in connection with Colonial interests, with Col. Robinson and Joseph Bouchette, to determine the boundary between New Brunswick and Quebec. In 1852 he represented New Brunswick at Washington, in negotiating a reciprocity treaty, which culminated in the Treaty of 1854. Up to 1855 the debates in the Legislative Council took place behind closed doors, but from that year, owing to the initiation of Mr. Botsford, the debates were open to the public. The resolutions for a Confederation of the Provinces were introduced by him in the Legislative Council in 1866, and carried. On the resignation of the Smith Government, Mr. Botsford was asked to form a new Administration, which task, however he declined. When, on July 1, 1867, the Union Act came into force, Mr. Botsford was, by Royal Proclamation, called to the Canadian Senate, and in 1880, became Speaker of that body, on the resignation of the Hon. R. D. Wilmot to become Lieutenant-Governor of New Brunswick. In a *Life of Dr. LeBaron Botsford*, written by Miss Frances Elizabeth Murray, a relative, and published by J. & A. McMillan, of St. John, in 1892, may be found much valuable information concerning the Botsford family in New Brunswick.



CHIEF JUSTICE CHIPMAN

CHAPTER XIII.

HON. WARD. CHIPMAN.

Ward Chipman, son and heir of Ward Chipman, Solicitor-General of New Brunswick, was born at St. John in the Leonard House, corner of Dock and Union streets, July 10, 1787. The Chipman House at that time was in course of erection. In 1792, the father wrote to Jonathan Sewell as follows, "Little Chip grows apace, and by the time he is five years old I shall be able to say of him as it is said of Dean Swift in his life of Sheridan, that at that age he could read a chapter in his Bible." A year later he wrote, "Little Chip is, I assure you, a very fine boy; he is yet but five and a half years old, and has been twice through his accidence, all his own choice, as he is at liberty to go to school (1) or stay at home."

William Gray, a prominent merchant of Salem, was married to a sister of the elder Ward Chipman, and the younger Chipman lived with them for a time for the purpose of attending school and laying the foundation of a classical education. On November 27th, 1797, William Gray wrote from Salem respecting young Chip to his father as follows: "Ward is a charming boy, I think he will be all you can wish. I sometimes tell him he must become a subject of the United States, but he says, 'No, No, No,' he never will desert the British cause or government, so you see he is a true son."

The Sewells always entertained an affectionate regard for the Chipman family as is evident from the following correspondence:

MONTREAL, 10 June, 1795.

MY DEAR SIR,—

As my prospects at Montreal open I reflect every day on the pleasure I shall one day receive from having with me my dear little Chippy. I look on him as my brother. Jonathan may also expect him. Should it really be more fit for his interests I should never be an obstacle to it but, sir, should my business increase, I would say he would be better with me than with my brother. At Montreal we have ten times the business that is done in the courts of Quebec, and Montreal I look upon will always be a more eligible place than Quebec for practice; it would be better therefore he should serve his time there for the purpose of getting acquainted with the inhabitants. You will think, sir, I am early in throwing out these ideas, concerning my little friend; I mean it, that I may be preferred in case Jonathan should ask for him. I refer you to my father's letter for everything relating to myself.

Yours sincerely,

STEPHEN SEWELL. (2).

WARD CHIPMAN, ESQ.

In 1801 Ward Chipman was sent to Harvard college, where over thirty years before his father had graduated. As he was at this time only fourteen, he would be a very youthful student; but as he had relations in Boston and Salem, moving in the first society, he would feel at home. His record at college was an honorable one, no mark of censure appearing against him during his course. The students excelling in scholarship had what was known as "Deturs." His was "Whitcomb's Works." He graduated in 1805, then in his eighteenth year, taking first place in his class, and on graduating delivered an English oration on "The Influence of Learning." On returning to his home at St. John, he entered the office of his father, as a student at law, and in Easter Term, 1808, was admitted an attorney, and four months later he was appointed a clerk of the circuits and of the crown, offices held by his father from the organization of the Province. The year 1808 was somewhat historic for

the Bar and Bench. Judge Upham and Chief Justice Ludlow having died, Solicitor-General Chipman was appointed to a puisne judgeship, and Attorney-General Bliss to the Chief Justiceship, followed by John Murray Bliss succeeding to the office of Solicitor-General, and Thomas Wetmore to that of Attorney-General. In 1810, young Chipman left for England to prosecute the study of law and entered at the Temple, where he remained three years. The following letter from Edward G. Lutwyche to his father is highly complimentary :

MY DEAR SIR,—

KENSINGTON, 8th August, 1813.

I cannot part with your son without bearing testimony to his uniform good conduct and expressing my regret at his departure. You may well feel proud of him. He is indeed an excellent young man and will prove an ornament to any situation in which he may be placed. You can best appreciate his professional requirements, but from me only can you know how he is beloved and esteemed here. In my small circle he is held in high estimation; as to Mrs. Lutwyche and myself, our regard for him has increased with our knowledge and we part with him as a brother and a son. I shall be happy to hear of his safe arrival to bless a fond father and mother, and may you long, very long, my dear sir and madam, enjoy the comfort of seeing his progress in life, in which I shall always feel a deep interest.

Yours, &c.,

MR. WARD CHIPMAN.

E. G. LUTWYCHE. (3)

On the appointment of William Hazen to the offices of Sheriff and Province Treasurer, in 1813, on the death of William S. Oliver, Ward Chipman succeeded to the office of Surrogate General. (4) Although William Botsford left the city of St. John, in 1807, for Westmorland, he retained the office of Recorder till 1815, when he resigned, and his nephew, Ward Chipman, was appointed by the Governor to the office.

The following is the marriage notice of Ward Chipman :

Married at Trinity Church, St. John, 24th March, 1817, by Rev. George Pidgeon, Rector, Ward Chipman, Junr., Esquire,

Advocate General, to Elizabeth, daughter of Henry Wright, Esquire, Collector of His Majesty's Customs, port of St. John.

King George III died January 29th, 1820, but his Worship the Mayor of St. John, and the Commandant of the garrison, only received information of that event by express from Fredericton, on Monday, April 22nd, 1820, also of the accession of George IV to the throne, with direction from His Excellency the Lieutenant Governor to proclaim the King in the City and County of St. John. At ten o'clock a. m., of the last named date, the bells of the churches began tolling, and minute guns firing from Fort Howe, the standard on the flag-staff and the flags of vessels in the harbor being at half-mast in honor of the memory of the late King. At twelve o'clock the members of His Majesty's Council, residing in the City, took the oaths of fidelity to George IV. His Worship the Mayor and members of the City Council, the High Sheriff, Magistrates and other officers of the City and County, the Commandant and other officers of the garrison, and a large number of the principal inhabitants of the City and County, assembled at the City Hall, Market Square, the troops of the garrison being paraded in front, when a proclamation signed by the leading officials was read from the platform by George Duncan Robinson, who was the herald appointed by His Worship the Mayor, Hon. John Robinson, for that purpose. The death of the sovereign terminated the existence of the House of Assembly, and a general election was held. The following notice refers to the election in the City and County of St. John. It is as follows:

Having received His Majesty's writs for the election of four of the most able and discreet of His Majesty's most faithful subjects of this Province to represent the County of St. John in General Assembly; and also two of the most able and discreet of His Majesty's most faithful subjects to represent the City of St. John in General Assembly, to be held in Fredericton on Tuesday the eleventh day of July next, I do

hereby proclaim and give public notice that an election for that purpose will be held at the City Hall, on Monday, the twelfth day of June inst., at ten o'clock in the forenoon, in obedience to the said writs and pursuant to the Provincial Statute in such cases made and provided, when and where all persons interested will give their attendance and be heard,

J. WHITE,

Sheriff City and County St. John.

St. John, N. B., June 2nd, 1820.

For the County seats there were five candidates, and at the end of fifteen days polling, the four highest on the poll were declared elected. The following are the names of the candidates, and the votes polled: Ward Chipman, 456; Andrew J. Ritchie, 430; John M. Wilmot, 423; Charles Simonds, 309; Zalmon Wheeler, 302. There were three candidates for the City representation, Harry Peters, Hugh Johnston, Junr., and Stephen Humbert; the two first named were elected. Stephen Humbert had at two previous elections been returned with Mr. Peters. When William Botsford, in 1823, was appointed to a seat on the Bench, the Speakership of the House of Assembly became vacant, and Ward Chipman was elected to that position. The death of the Honorable Ward Chipman, President and Commander-in-chief, in 1824, created a vacancy which was filled by the elevation of his son (5), then speaker of the House of Assembly, to the vacant judgeship and a seat in the council. Under the Treaty of Ghent, 1814, between Great Britain and the United States, which closed the war between these two nations, provision was made for locating the boundary between the State of Maine and the Province of New Brunswick, generally known as "the dispute as to the North West Angle." On the appointment of Ward Chipman, Senior, agent on the part of the Crown, he asked that his son might be associated with him, with full power to act jointly or separately, and as no additional expense was to be incurred in consequence

of such appointment, the British Government assented to the request. The last meeting of the commission was held at New York, October 4, 1821. The British Commissioner was Thomas Barclay. The arguments of the agents under Article V, of the Treaty of Ghent on the point in controversy having been closed, Mr. Barclay, one of the commissioners to whom the decision of the said point is referred:

Hereby states to Mr. Van Ness, the other Commissioner, that as to the North West Angle of Nova Scotia, he is of opinion that that point ought to be established at or near the mountain called Mars' Hill, distant about forty miles on a due North Line from the source of the St. Croix, and about thirty miles south of the River St. John.

The report of the American Commissioner was as follows:

Mr. Van Ness, one of the commissioners, to whom the said point was referred, hereby states to Col. Barclay, the other commissioner, as to the question as to the North West Angle of Nova Scotia; he is of opinion that that point ought to be fixed at a place about one hundred and forty miles due North from the source of the St. Croix, and about sixty miles North of the River St. John.

The two commissioners, failing to agree as to the point in controversy, laid their reports before their respective governments.

The following document is a grant of leave of absence for Ward Chipman from his official duties for the purpose of proceeding to England:

G. S. SMYTH.

By His Excellency, Major General George Stracey Smyth, Lieutenant Governor and Commander-in-chief of the Province of New Brunswick, &c., &c., &c.

Leave of absence for six months from the twentieth of March next, is hereby given to Ward Chipman, Junior, Esquire, His Majesty's Advocate General in the Court of Admiralty, and also Clerk of the Circuits, and Clerk of The Crown on the Circuits for this Province, to go to England for the purpose of attending to the duties of his appointment as His Majesty's agent under the fourth and fifth articles of

the Treaty of Ghent. Given under my Hand and Seal at Fredericton, the twenty-fifth day of February, in the year of our Lord, one thousand eight hundred and twenty-two, and in the third year of His Majesty's reign.

By His Excellency's command,

WM. F. ODELL.

In pursuance of the said leave Thomas Barclay and Ward Chipman proceeded to London to lay the question of the boundary before the government and to consult on future action.

They each received for their services, as commissioner and agent respectively, nine hundred and forty pounds sterling, per annum.

Another question of much importance, was referred to Mr. Chipman. As nearly all the imports into Canada, were entered at Quebec or Montreal, provision was made for the apportionment of the duties every three years between Upper and Lower Canada. The two Provinces each appointed a commissioner and failing to agree these were to choose an Umpire, and not being able to agree on an Umpire, the selection was left to the British Government. In 1825, the Government designated Ward Chipman to the office of Umpire. In this connection, the following letter from Mr. Barclay is interesting:

MY DEAR SIR,—

NEW YORK, 25 April, 1825.

I received the day before yesterday, your receipt in triplicate, for allowance for the April quarter, and for me to write the set of Exchange upon for your allowance. I rejoice on your appointment to the Bench, and on your Umpirage of the Canadian Arbitration. It might savor of adulation was I to add, it is no more than what you and your father's past services merited. The handsome manner in which Lord Bathurst conferred the latter upon you is most flattering. How would your worthy father, my late friend, rejoice were he in the land of the living. Sir Howard Douglas may be, and probably is, all you represent; he is a stranger to me in character as well as in person, *entre nous*, I did not admire the style, the language, or the whole of the matter in his speech, at the opening of your late session of Legislature.

I trust it is not necessary to say, how happy I shall be to see you here on your journey to Canada. Early as it is in the season, we have left the city for our cottage on the banks of the East River four miles from here. Present Mrs. Barclay's and my affectionate regards to your good mother and lady.

Believe me, &c.,

HON. WARD CHIPMAN.

THOS. BARCLAY. (6)

Mr. Chipman when in Canada would see Jonathan and Stephen Sewell, the former, at that time, Chief Justice of Quebec. Although the duties of the Umpire occupied only a few weeks, Judge Chipman received seven hundred pounds sterling for his services, and as he was in receipt of nine hundred pounds as agent for the British government on the North West Angle, his emoluments were considerable, since to these two sums is also to be added his salary as a judge. The following letter relates to the North West Angle controversy :

SIR,—

FOREIGN OFFICE, 9 March, 1825.

It being desirable that the commission under the fifth article of the treaty of Ghent should be carried on with as little expense as possible to the Public Service, and it being more especially requisite that the commission to which you are agent now that it has ceased to be in active operation, I have received Mr. Secretary Canning's direction to acquaint you that he has judged it expedient to direct that your salary of nine hundred and forty pounds shall, after the 5th of July next, be reduced to six hundred pounds sterling.

I am, &c., &c.,

HON. WARD CHIPMAN.

JOSEPH PLANTA.

The Judges, at this time presented a memorial to Governor Sir Howard Douglas, for an increase of salary, the following is the memorial :

*To His Excellency Major General Sir Howard Douglas,
Baronet, Lieutenant Governor.*

The memorial of the Chief Justice and Assistant Judges Humbly sheweth :

That the present salary of your memorialists, namely, seven hundred and fifty pounds per annum to the Chief Justice, and five hundred pounds to each of the assistant judges, are altogether inadequate to their support in their stations in

society. The duties they have to perform are as laborious as they are important, Circuit Courts being now established in every County in this now extensive Province, and a law having passed in the present session of the Assembly for erecting two more counties, they may look forward in the rapidly advancing state of the country to a greater increase of business in the courts, and a corresponding increase of labor and responsibility.

Their emoluments from fees are trifling, not exceeding upon an average of the last five years sixty pounds to each Judge, and the sum granted in the present circuit will barely reimburse them for their services.

The expense of living here has very much increased since the present salaries were established, and the salaries, if compared with the existing income of the other officers in the Province, will be found very low in the scale of comparison. They afford no adequate inducement to gentlemen to quit their lucrative practice at the Bar and accept seats on the Bench.

These salaries are also low when compared with those of the neighboring Colonies. In Lower Canada, the Chief Justice (7) has fifteen hundred pounds per annum. In Nova Scotia the Chief Justice has one thousand pounds sterling, borne on the parliamentary grant for the Civil List of the Province, and the Puisne Judges have a salary of six hundred pounds paid by the Province, but in that Colony the Judges fees are so large, that from the best information your Memorialists can obtain, the actual income of the Judges there is about eight hundred pounds sterling per annum. It being the wise policy of His Majesty's Government to provide for the maintenance of the dignity and independence of the Judges throughout all his domains, by affording them adequate means of support, your Memorialists with confidence, lay this representation before your Excellency:

Your Memorialists respectfully request your Excellency to recommend to His Majesty's Government an increase of their salaries, and when all the considerations herein before detailed are taken into view, they trust that a salary of one thousand pounds sterling to the Chief Justice, and seven hundred and fifty pounds sterling to each of the assistant Judges, will be thought no more than a moderate and proper allowance.

JOHN SAUNDERS, *Chief Justice*,
J. M. BLISS,
WILLIAM BOTSFORD,
WARD CHIPMAN.

Fredericton, 6 March, 1826.

Sir Howard Douglas forwarded the memorial with the following letter :

FREDERICTON, 8th March, 1826.

MY LORD,—

Among the recommendations that I have addressed to your Lordship, there is none that I can be more desirous of presenting to your Lordship's favorable consideration than the memorial which accompanies this dispatch, in which at my suggestion the Chief Justice and Judges of the Supreme Court have embodied their claims for an increase in salary, on grounds which I am persuaded your Lordship will consider deserving most favorable consideration.

I assure your Lordship that all the grounds set forth in the memorials are stated in terms to which I am desirous to give my support, and a strong sense of what is due to these distinguished persons calls upon me to add, that the manner in which they perform their several highly important duties, increasing in labour, difficulty and fatigue, with the improving circumstances of the country, claim from me an expression of the most earnest desire that the prayer of their memorial be complied with.

I have, &c.,

RIGHT HON. EARL BATHURST.

HOWARD DOUGLAS.

At this time there was in the Bank of New Brunswick, in the name of the Crown, a large sum of money known as the "Timber Fund," being tonnage collected on square timber exported from the Province. Sir Howard Douglas recommended that the increases of salaries to the Judges be taken from this fund. The salary of the Chief Justice was increased to nine hundred pounds sterling, and the assistant Judges to six hundred and fifty pounds sterling from the first January, 1827. From that time the salaries were charged on the King's casual revenues. The last Imperial grant was in 1826. The following letters from the Colonial office to Mr. Chipman relating to the North West Angle, are self-explanatory :

FOREIGN OFFICE, March 17, 1828.

SIR,—

As there exists but little probability that the commission under the 5th Article of the Treaty of Ghent will again be

called into active operation, His Majesty's Government have judged it expedient to terminate and dissolve the commission. Under these circumstances your services as His Majesty's Agent will no longer be required, and I have therefore to acquaint you that your salary of six hundred pounds will cease the 5th of April next, after which period Mr. Barclay is directed to discontinue to draw any further bills on account of the commission now mentioned.

I am, &c.,

HON. WARD CHIPMAN.

DUDLEY. (8).

FOREIGN OFFICE, 3 April, 1828.

MY DEAR SIR,—

The packet of this day will carry to you the official announcement of the closing of the commission under the 5th Article of the Treaty of Ghent, and the termination of the expenses attending it. I should express my regret on your account at the consequent cessation of your salary, but when you consider how little cause there is for the commission, considering that the appointment of agents has been little more than a *decent* sinecure to you for the last five or six years, I think you would laugh at my condolence.

I send you a copy of the convention recently concluded on the subject of the Boundary, which will give a great deal of trouble yet to whosoever may be appointed to make out the supplementary statement required therein.

I know not who could clarify the intricacies of that immeasurably long subject as well as yourself, and I shall feel it my duty to state that opinion *pro bono publico*, ere long.

Yours, &c.,

HON. WARD CHIPMAN.

HENRY ROLLESTON.

Mr. Rolleston was evidently a strong personal friend of Ward Chipman and disposed to promote his personal and pecuniary interests, whenever the occasion might arise as appears from the following letter :

FOREIGN OFFICE, May 31, 1828.

SIR,—

I lose not a moment in telling you privately there is an intention of employing you to make out the statement required to be laid before the arbitrating Sovereign, under the late convention with America, a copy of which I have already forwarded to you, and this intention will very shortly be made to you officially.

Your pamphlet and letter signed "Verax," I had much pleasure in communicating to Mr. Backhouse, who admitted the ability of the author, and said he would keep them by him as a specimen of your talents. It is not yet settled who is to be the arbitrating Sovereign.

Yours, &c.,

HENRY ROLLESTON.

HON. WARD CHIPMAN.

Under the Treaty of Ghent, 1814, it was stipulated, should the commissioners appointed to locate the North West Angle of Nova Scotia fail to agree, the two governments could refer the matter to a European sovereign; and by virtue of that power they chose the King of the Netherlands. Great Britain was represented before him by Sir Howard Douglas, the Governor of New Brunswick, and Ward Chipman. The American representatives were Judge Preble and Albert Gallatin. In October, 1828, Ward Chipman and Mrs. Chipman were passengers in His Majesty's packet "Chichester," from Halifax to Falmouth, he spending the winter in London in preparing the case on behalf of Great Britain. In April following he was joined by Sir Howard Douglas. The Commissioners met the King of the Netherlands at The Hague, when the question in controversy was submitted to him for his future decision. As it involved the title to over twelve thousand square miles of territory, it required much care and consideration. After the argument of the case before the Umpire, and just previous to Mr. Chipman's leaving England for St. John, he received the following flattering letter from Lord Aberdeen :

FOREIGN OFFICE, July 5, 1830.

SIR,—

As you are now about to return to your post in New Brunswick, to resume the duties from which you were called in the year 1828, in order to assist in the preparation of the case on the part of the British Government, relating to the boundry between His Majesty's Dominions in North America and the United States, I feel that I should not be doing justice

to the zeal and ability with which you have devoted your time to that most important question, were I to withhold from you the expression of the entire approbation of your services by His Majesty's Government.

I am, sir, etc., etc.,

ABERDEEN. (9).

HON. WARD CHIPMAN.

Before leaving for home, Mr. Chipman presented the following request to be presented at Court to His Majesty King William IV.:

3 BLANCHARD PLACE, 17 July, 1830.

Mr. Chipman presents his compliments to Sir George Murray, as he is leaving Town on Wednesday next to embark for America, and it is stated in the papers that His Majesty is to receive on Monday next an address of the University of Cambridge, he ventures to ask if it is possible for him to be presented to His Majesty on that day, an honor he is very desirous of having before his departure. Mr. Chipman has received from Earl Aberdeen the most gratifying expression of the approbation of His Majesty's Government of his services on the Boundary question, which he ventures to hope may render the indulgence not altogether unwarranted.

Mr. Chipman was gratified in being presented to the King, who had but recently ascended the throne. On his return trip he travelled from London to Falmouth by the post coach. The expenses of travelling in those days were much higher than at present, as we find that he paid twenty-seven pounds sterling for himself and Mrs. Chipman from London to Falmouth. From the latter place he took passage to New York. His arrival home is thus noticed by the *St. John Courier* of September 25th, 1830:—

His Honor Judge Chipman and Lady arrived in Town on Thursday from London, via United States, after an absence of nearly two years. His Honor and Lady came by land from St. Andrews, where they took the new coach, recently established between the city and the latter place, being the first passengers that travelled the route in a stage coach.

The King of the Netherlands made his award at The Hague January 10th, 1831, of which the following is the summary:

The arguments advanced on either side, and the documents exhibited in support of them, cannot be considered as sufficiently preponderating to determine a preference in favor of one of the two lines respectively claimed by the high interested parties as boundaries of their possessions, and that the nature of the difference, and the vague and not sufficiently determined stipulations of the treaty of 1783, do not permit to adjudge either of those lines to one of the said parties, without wounding the principle of law and equity with regard to the other.

We are of opinion that it will be suitable to adopt as the boundary of the two countries a line drawn due north from the source of the River St. Croix to the point where it intersects the middle of the River St. John, thence along the middle of that river ascending it to the point where the River St. Francis empties into the River St. John, thence the middle of the River St. Francis ascending it to the source of its north-westermost branch, thence a line drawn due west to the point where it unites with the line claimed by the United States, thence to the northwestermost source of Connecticut River.

As the British government claimed the high lands, thirty-seven miles south of the River St. John, and the American government the high lands sixty-three miles north of that river, the decision was to both very disappointing. In place of deciding in favor of one or the other high lands, the Umpire substituted the river. The question was one of great difficulty, largely consequent on the imperfect knowledge of the country when the treaty was made. In 1798, fifteen years later, James Sullivan, agent for the United States before the Commissioners, referred to the high lands and to the North West Angle as follows:

A future day is reserved for those questions, by whom they will be settled, as well as the form in which that settlement shall be made is with those generations to whom we are to leave the country. Long before that part of the country shall be settled or even effectually explored the changes of government of this continent will probably render the North West

angle of Nova Scotia of very little consequence to the English or American nations.

In 1836, an Act of incorporation was obtained from the Legislature of New Brunswick authorizing the construction of a railway from St. Andrews to Quebec, the Lieutenant-Governor of New Brunswick, Sir Archibald Campbell, having given ten thousand pounds out of the King's casual and territorial revenues. A survey was made by Captain Yule, of the Royal Engineers. No special progress, however, was made towards the construction of the railway, as the State of Maine claimed the country through which the railway would pass. In 1839, a crisis was reached, a boundary must be fixed either by a bargain worthy of nations or traced by the point of the sword. Men stood facing each other with guns on their shoulders on opposite sides of a fordable river thirty yards wide, when the discharge of a musket would have brought on a war whose fires would possibly have encircled the globe. Fortunately, diplomacy was not one of the lost arts, the British government, through Lord Ashburton, and the United States, through Daniel Webster, solved the problem of over half a century's existence by a compromise signed August 9th, 1842, known as the Ashburton Treaty.

The first Court presided over by Judge Chipman after his return from Europe was at St. John, January circuit, in 1831, at which he delivered a comprehensive charge on the powers of the different courts in the province, closing with the following:

I will conclude with a remark, trite indeed, but which cannot be too often repeated, that the object of all penal jurisdiction is the prevention of crime, but positive laws will be of little avail to this effect, without the aid of religion and moral principle. It becomes, then, the constant duty of us all, as members of civil society, without adverting to any higher source of obligation in our several stations, to protect and uphold the interests of religion and morality, as the great

preventative of all evil deeds and the only sure foundation of the social fabric.

In 1827, great changes in criminal laws were made in England through the efforts of Romilly, Mackintosh, Wilberforce, and others. These changes in England were followed by similar changes in the Province of New Brunswick. The distinction between petit and grand larceny was abolished by the Legislature in 1830. Up to that time stealing to the value of twenty shillings was punishable with death. As it was within the benefit of clergy, the sentence in most cases was imprisonment or whipping, sometimes thirty-nine lashes three times administered. After 1831, this law ceased to form part of the criminal code of the Province. Prisoners charged with minor offences were allowed to defend by counsel, while for offences involving life, the law did not permit counsel to appear; but after 1840 the law was changed and counsel was allowed to appear and defend in all cases. Up to 1842, highway robbery and burglary were capital offences without the benefit of clergy, and punished with death. In that year, also, the pillory, as a part of the criminal law, was abolished.

Ward Chipman was again a recipient of the favor of his sovereign, as, for a second time, he was selected on a mission to Canada. Of all the public men of the Province, up to that time, he was the most favored. To the anxiety through which his father passed in the first twenty-five years of his residence in the Province the younger Chipman was a stranger. The following communication refers to his further employment by the Crown:

FOREIGN OFFICE,
Downing Street,

SIR:—

1st January, 1833.

Information having been received that the Arbitrators have not been able to agree on the apportionment between Upper and Lower Canada of duties collected in the Lower Province,

and that they have not selected a third arbitrator, I have to acquaint you that His Majesty has been graciously pleased in the exercise of his power to appoint you a third arbitrator. It is a pleasure to me to convey to you the proof of the sense entertained of your former discharge of the same high office, and I doubt not that on the present occasion, as before, you will fulfil the important trust devolving upon you with that ability and impartiality which shall be satisfactory to His Majesty's subjects in Upper and Lower Canada. The Governors of both Provinces have been apprised of your appointment, and the Governor of New Brunswick has instructions by this mail to grant you leave of absence to proceed to Canada in prosecution of the duty of Arbitrator.

Yours, etc.,

HON. WARD CHIPMAN.

GODERICH. (10)

Travelling at that time was slow and uncertain. Nearly two months passed before Mr. Chipman acknowledged the receipt of this most pleasing intelligence and release from judicial duties. It meant a visit to old friends, with light work and a handsome recompense. The following is Mr. Chipman's letter acknowledging his appointment:

St. JOHN, N. B., 28th February, 1833.

MY LORD:—

I have had the honor to receive your Lordship's letter of the first January last, accompanied by a commission under the Royal Sign Manual, appointing me third arbitrator under the Act 3, George IV, for the apportionment between Upper and Lower Canada of the duties collected in the latter Province, and I beg to offer to your Lordship my grateful acknowledgement for the obliging terms in which you have been pleased to convey to me His Majesty's command. It will be my earnest endeavour in executing this important trust to prove myself worthy of your Lordship's good opinion and His Majesty's most gracious favor. I shall without delay communicate with the arbitrators for the respective Provinces and make arrangements for proceeding in the arbitration.

I have the honor to be, with highest respect, my Lord,

Your Lordship's most obedient humble servant,

EARL GODERICH,

WARD CHIPMAN.

Secretary of State.

The three arbitrators met at Montreal on June 12th, 1833, and entered upon the examination of the matter referred to them; but the arbitrator on the part of Lower Canada did not agree with the other two. The following is the award of the two:

Now therefore, we, Ward Chipman and George H. Markland, being a majority of the arbitrators, do hereby make and certify our award in the premises in the manner following, that is to say:—We do award that for the four years next succeeding the first day of July, one thousand eight hundred and thirty-two, one-third part of the duties levied in the Province of Lower Canada, under authority of any act passed or to be passed therein upon goods, wares and commodities imported therein by sea, shall be paid to the Province of Upper Canada.

In witness whereof we have hereto set our hands and seals, at Montreal, in Lower Canada, this twenty-sixth day of June, in the year of our Lord one thousand eight hundred and thirty-three.

WARD CHIPMAN,
GEORGE H. MARKLAND.

The following letter is an acknowledgment from the Secretary of State as to the award:

DOWNING STREET, 6th November, 1833.

SIR:—

I have to acknowledge the receipt of your letter of July last enclosing award of the arbitration for apportioning the duties between the Provinces of Upper Canada and Lower Canada.

I have much satisfaction in conveying to you His Majesty's approbation of the manner in which you have discharged the high and important duties entrusted to you. I have suggested to Lord Alymer that the sum of seven hundred pounds stg., should be paid to you, as on the former occasion, in remuneration of your services as a third arbitrator.

I have, etc.,

E. G. STANLEY. (11)

HON. WARD. CHIPMAN.

As the commission began its work on the 12th day of June and closed its labors on the 29th of the same

month, the remuneration may be considered liberal. The year 1833 closed Ward Chipman's services as a diplomat on the part of the Crown.

The opening of the second half century of the Bench of the Supreme Court was marked with great changes consequent on the death of Chief Justice Saunders. For the vacant office there were three aspirants: Charles J. Peters, John Murray Bliss, and Ward Chipman, all pressing claims with great pertinacity and from different standpoints.

Lieutenant-Governor Sir Archibald Campbell wrote the following letter to the Colonial Secretary:

FREDERICTON, N. B., 26th May, 1833.

SIR:—

I regret to have to announce to you the death of Chief Justice Saunders at this place on the morning of the 24th instant.

Enclosed I have the honor to submit to you an application from the Attorney-General for the vacant office, but as I have reason to believe it will be followed by other two, if not from all the puisne judges, it would not be fair or proper, even if I were disposed, to recommend one claimant in preference to another, until the several applications are before you. I shall therefore content myself on this occasion with assuring you that I have ever found the Attorney-General a most zealous and efficient officer in the discharge of his official duties, and that I consider him perfectly deserving of every consideration to which he may be by usage entitled.

I have, etc.,

ARCH. CAMPBELL.

RIGHT. HON. E. G. STANLEY.

The following is the memorial of Attorney-General Peters:

FREDERICTON, 24th May, 1834.

May it please your Excellency:—

The office of Chief Justice of the Colony having become vacant, I feel it a duty incumbent on me as well as respects myself and family, as Attorney-General (an office which His Majesty six years ago was pleased to confer on me), to solicit being appointed thereto. It having been the usual

routine in these North American Colonies, with a very few exceptions, and those under particular circumstances, has induced a hope and expectation that such would be the case as regards myself. Should I be disappointed I have to suppose the public will form a conclusion unfavorable to my personal and public character, that I am considered by His Majesty's government either unworthy or unfit for the office. I held the situation of His Majesty's Solicitor-General for four years without a salary or emolument, and when I humbly solicited that some allowance might be annexed to that office, was answered that the person having that situation in the Colony was presumed to hold it as a retainer for future promotion as vacancy might occur. I have now passed through all the degrees from King's Counsel to Attorney-General, embracing fourteen years, during which period, I humbly trust, I have faithfully performed all the duties which those situations respectfully demanded. I came to the Colony an infant Refugee at its first settlement, and have grown up with its rise and have a very large family, probably the largest family of children within it. I humbly submit this my petition for gracious consideration of His Majesty, and solicit from Your Excellency a favorable recommendation.

I have, etc.,

CHARLES J. PETERS.

HIS EXCELLENCY ARCHIBALD CAMPBELL.

The letter of the Governor, of two days later date, to the Colonial Secretary was all the Attorney-General could desire. It held out strong hope of the success of his application.

Sir Archibald Campbell further wrote to the Hon. E. G. Stanley :

FREDERICTON, N. B., 4 June, 1834.

SIR:—

I have the honor to submit for your consideration applications from the senior and junior judges of the Supreme Court of the Province, Mr. Justice Bliss and Mr. Justice Chipman, for the vacant office of Chief Justice.

Having determined in an application of this importance, demanding qualifications of a high and peculiar order, to abstain from recommending either of the claimants as best qualified to succeed, I have only to observe that my knowledge and experience of all the candidates, whose claims are now

before you, afford me the very satisfactory assurance that whichever His Majesty may be pleased to select will prove a fit and worthy successor to the Judicial Bench of New Brunswick.

I have, etc.,

ARCH. CAMPBELL.

RIGHT HON. E. G. STANLEY.

The following is the memorial of Judge Bliss :

SIR:—

The office of Chief Justice having become vacant by the death of John Saunders, Esq., I take the liberty of addressing Your Excellency, to solicit to be promoted to that office, and I trust when Your Excellency shall have taken into consideration the claims upon which I found the application you will not deem it presumptuous.

He pointed to the great sacrifice he had made in accepting a seat on the Bench on the death of Judge Winslow, and the great injustice done him, in 1828, in being passed over in the office of President and Commander-in-Chief, when Sir Howard Douglas was absent from the Province :

It appears that the principal reason for diverting the succession of the administration was the absence of Judge Chipman, and if so, I must say that I consider it not only a case of cruel hardship, but of great injustice in calling away a very junior judge to fill an office of considerable profit and thereby prevent his senior from entering one of honourable emolument to which he had become entitled, by long and tried services, and it is not unworthy of remark that the junior judge should now set up the services he rendered upon this and other similar services as a claim to promotion over a senior of long standing.

I have, etc.,

J. M. BLISS.

SIR ARCHIBALD CAMPBELL.

The following is the memorial of Judge Chipman :

SIR:—

The office of Chief Justice having become vacant, by the death of the late venerable incumbent, I beg leave most respectfully to refer Your Excellency to the letter which I took the liberty to address to Your Excellency under date of 26th

February, 1833, on the subject of this office, and to solicit Your Excellency's recommendation of me to the Secretary of State to succeed thereto.

My profession has been the favorite pursuit of my life, and I am willing to avow that I have always aimed at its highest honors if by fair exertions I could obtain them. When I was in England, in 1829, on the business of the Boundary, I was honoured with an interview by Sir George Murray on the subject of the office now vacant, and from what then passed I have every reason to believe that if this vacancy had occurred while Sir George was Secretary of State my claims would have been favourably entertained by him. Again last year, when I was appointed by the government a second time the Canadian Arbitrator, I thought it right to lay before the Secretary of State a written statement of my claim, and I received a reply thereto from Mr. Hay, dated July last, acquainting me, by Mr. Stanley's directions, that whenever the office became vacant, all due attention would no doubt be paid by the Secretary of State to the claims which I had put forth to the appointment.

I have the honour, etc.,

WARD CHIPMAN.

HIS EXCELLENCY SIR ARCH. CAMPBELL.

The appointment was secured by Ward Chipman as appears from the following despatch:

DOWNING STREET, 22 July, 1834.

SIR:—

I have the honour to acknowledge the receipt of your dispatch of 26th May last, reporting the death of the Chief Justice of the Province, and I have to acquaint you in reply that upon a review of the valuable services which have been rendered to the public by Mr. Ward Chipman, and of the very strong claims which he possesses to the favorable consideration of the Government, I have felt it my duty without delay to submit his name to His Majesty for the vacant office, and that His Majesty has been graciously pleased to comply with my recommendation by appointing Ward Chipman Chief Justice of New Brunswick accordingly.

I have, etc.,

T. SPRING-RICE. (12)

SIR A. CAMPBELL,
Lieut.-Governor.

Ward Chipman took his seat as Chief Justice at the meeting of the Supreme Court in Fredericton, 4th October, 1834, and in doing so, he referred to his venerable predecessor who had filled the office of a Judge for the unexampled period of forty-four years: and during the whole of that time had been engaged without intermission in the discharge of its duties. Of Judge Bliss, he said: "That from the beginning of his course in life, and from a very early period in the history of the Province, he had been a member of this Bar, and continued in full practice until he was promoted to the Bench where he had occupied a place for the long period of eighteen years. They were both among the men who first struck the axe in the wilderness, and who brought the country to what it now is; and that they both, in the discharge of the various and important duties allotted to them through life, ever carried with them the respect and affection of the country.

He has been associated with them and with his learned brother, Mr. Justice Botsford, for the last nine years in the judicial office, and their mutual intercourse, as well as regard to public duty, as in private life, was ever marked by the most perfect harmony. Their united aim and constant effort had been in singleness and zealousness to administer justice."

A meeting of the puisne judges of the Supreme Court, and barristers, was held in the Province Hall, 21st February, 1838. There were present: His Honor Mr. Justice Botsford, His Honor Justice Carter, His Honor Mr. Justice Parker, the Solicitor General, John Ambrose Street, Hon. Neville Parker, Hon. E. B. Chandler, Lemuel A. Wilmot, Alfred L. Street, George J. Dibblee, John W. Weldon, George F. S. Berton, Barth. C. Beardsley, Charles Fisher, Stephen Miller, and David S. Kerr, Esquires; His Hon. Mr. Justice Botsford in the chair. Mr Berton was ap-

pointed Secretary of the meeting. On motion of Mr. Justice Carter :

Resolved unanimously, That in testimony of the respect we entertain for the high judicial character and legal attainments of His Honor Chief Justice Chipman, His Honor be requested to permit his portrait to be taken by Mr. Hoit, the same to be placed in such part of the new Court House to be erected in Fredericton, as may be hereafter determined.

Resolved, That a Committee be appointed to communicate the foregoing resolution to His Honor the Chief Justice, and (in the event of his acceding to the request herein contained) to make the necessary arrangements for carrying the same into effect; and that his honor Mr. Justice Carter, His Honor Mr. Justice Parker, the Solicitor-General, and the Honorable Neville Parker be a committee.

Resolved, That the proceedings of the meeting be published in the *Royal Gazette*.

The Chair having been taken by His Honor Mr. Justice Carter,

Resolved, That the thanks of the meeting be presented to His Honor Mr. Justice Botsford, for his kindness in presiding at the meeting.

G. F. S. BERTON,
Secretary.

At this time Chief Justice Chipman was in the fifty-first year of his age. The portrait was painted and was an excellent one. It was placed in the Province Building and escaped the fire of 1880, and now adorns the room of the Supreme Court in the Legislative building at Fredericton.

The Chief Justice, with Mrs. Chipman, Miss Armstrong, and the Hon. Amos E. Botsford, left St. John on June 25th, 1840, in the steamer *North America* for Boston, to take passage at New York in the packet ship *Oxford* for Liverpool. They were accompanied to Boston by H. Bowyer Smith, Robert L. Hazen and George Botsford. Before leaving the Province Sir John Harvey, the Lieutenant-Governor, gave to the Chief Justice the following letter to Lord John Russell:

GOVERNMENT HOUSE,

FREDERICTON, N. B., June 16, 1840.

MY LORD:—

This dispatch will be conveyed to your Lordship by Chief Justice Chipman whose state of health I regret to say, renders a voyage to Europe extremely disagreeable and indeed necessary, and to whom I have accordingly granted four months' leave of absence for that purpose. Such being the object of that absence to try to seek benefit to his health by a short, but entire change of climate, combined with a sea voyage, and not merely for the purpose of vacation or the transaction of private affairs, I venture to express my confident hope that the same indulgence in regard to his full salary during his short absence may be extended to Chief Justice Chipman. I would respectfully observe that if there be one individual of the Bench of Judges in British North America to whom the favor and consideration of the Queen's government are more eminently due on the ground of valuable public services than another, that individual, in my opinion, is the gentleman whom I have now the honor to present to Your Lordship. It may be scarcely necessary for me to add that Chief Justice Chipman is perfectly competent, perhaps beyond any other person in the Province, to give your Lordship full and correct information upon every point connected with the actual state of New Brunswick.

I have, etc.,

J. HARVEY. (13)

LORD JOHN RUSSELL.

On their arrival in London, the Chief Justice called at the Colonial office, and held an interview with Lord Normanby on the boundary question, then perilling the peace of two nations. Their return to New Brunswick was in the Cunard steamer *Acadia*, via Halifax, arriving at St. John, October 17th, after an absence of four months. The rule in official life at that time was that one-half the salary only should be paid during absence, but in consequence of the recommendations of Sir John Harvey the salary of the Chief Justice, during his absence in England, suffered no abatement. In 1832 the puisne judges attended the Legislature for the last time, having up to that time, from the organi-

zation of the Province, discharged legislative and executive duties. Chief Justice Chipman, as president of the Council, held his seat till 1842, when he resigned. His reasons are given in a letter to his relative, Charles Hazen, of Boston, as follows :

I have withdrawn from the Legislative Council for two reasons; first, because I could not approve of the Governor's measures; and secondly, because I thought it would be more conducive to my health to shake off the excitement of political conflict.

My general health, I am happy to say, is very good this winter; nervous and muscular weakness, particularly in the hands, are what I have principally to complain of. Robert L. Hazen has been elected a member of the Assembly for the City, by an almost unanimous vote. His talents, integrity and independence, have achieved this for him, and placed him in the very first rank at the Bar.

The time had now arrived for the retirement of the Chief Justice from the Bench. In 1845, the Lieutenant-Governor, Sir William Colebrooke, wrote the Colonial Secretary as follows :

The Chief Justice has not intimated his intention of resigning, although it is probable, from his inability to discharge the active duties of his station in attending the circuits and conducting trials, that he would do so if he could obtain from Her Majesty a pension, without the submission of a special claim on his behalf to the Assembly.

As nothing came from the foregoing suggestion, the Chief Justice continued in office until 1851. He sent to the Lieutenant-Governor the following letter tendering his resignation :

FREDERICTON, October 17th, 1850.

SIR:—

After a period of more than forty years employment in the service of the Crown, in various offices in this Province, twenty-five of which have been on the Bench of the Supreme Court, nine years as a puisne Judge, and the remaining sixteen in my present office of Chief Justice, I find my bodily frame so debilitated that I cannot continue in office with satis-

faction to myself, or, I fear, with advantage to the public, and I am desirous of retiring at the end of the year. I therefore most respectfully request your Excellency to forward this tender of my resignation to Her Majesty's Secretary of State for the Colonial Department, to be laid at the foot of the Throne.

With regard to a retiring allowance, after what has occurred in this Province, on this subject, I will only say that having, by the blessing of Providence, means of living apart from the emoluments of office, I will not make the want of such an allowance an impediment to my resignation.

I have, etc., WARD CHIPMAN.

HIS EXCELLENCY SIR EDMUND HEAD.

GOVERNMENT HOUSE, FREDERICTON,

DEAR SIR:—

October 19, 1850.

I have received your letter of the 17th instant, tendering your resignation of the office of Chief Justice of this Province.

My own residence in this country has been short, but it has been sufficient to make me appreciate the services which you have rendered to Her Most gracious Majesty and the public.

I am not blind to the merits of your colleagues on the Bench, but I feel that the high character attaching to the judgments of our Supreme Court, is, in a great degree, due to your learning and integrity. I feel, moreover, that your very bodily infirmities have contributed to the result by enabling you, while the other judges readily discharge the more active duties of the circuit, to give full and deep consideration to the judgment of the whole court.

It is not for me to dwell upon your public services before you assumed the seat on the Bench. I will only add that I regret most deeply the existence of infirmities which deprive the country of your services. I feel some shame that a life thus spent should receive no acknowledgement in the shape of a retiring allowance.

While it is a matter of rejoicing that to yourself such an allowance is not a material object, it may be seriously doubted how far the absence of a provision of this kind is conducive to the real interests of the people, the probability of securing to the Bench the highest talent and integrity in the country. I will not fail to forward your letter to Her Majesty's Secretary of State for the Colonies.

Believe me, etc.,

HON. CHIEF JUSTICE.

EDMUND HEAD. (14)

Ward Chipman, from his birth, was destined for the Bar, and nothing was left to fit him for its highest duties. The first fourteen years of his life were spent in his father's house, rich in social, legal, and political surroundings. He spent from 1801 to 1805 at Harvard University, and on leaving entered the office of his father, and after his admission to the Bar proceeded to London and entered the "Temple," remaining there till 1813, a period of three years. While in no sense brilliant, he was remarkable for his studious habits, and was much attached to his chosen profession. At the Bar he had rivals with greater natural gifts and more brilliancy, but none better read in the law. His style of address was conversational; to eloquence he laid no claim. That he owed something to family connection is unquestionable, yet he left nothing undone to achieve success. Before attaining his twenty-fourth year, he was chosen one of the representatives for the County of St. John, and three years later became Speaker of the House of Assembly, and was at that time the only member of the Bar in the house. In his thirty-eighth year he was appointed to the Bench, and a seat in the Council, succeeding his father; and ten years later he reached the summit of his ambition, becoming Chief Justice of the Province. Ward Chipman did not long survive his retirement from the Bench. The last rising and setting sun he beheld was on the 26th day of November, 1851, the sixty-seventh anniversary of the organization of the Supreme Court of New Brunswick. He died in his sixty-fifth year. His mother lived with him in the Chipman House, after the death of her husband in 1825, and died May 18th, 1852, in her eighty-seventh year, being the sixty-ninth anniversary of the landing of the Loyalists. The widow of Chief Justice Chipman died in the same house July 4th, 1876, in her eighty-fourth year, the last of the name in New Brunswick, the date of her

death being the centennial anniversary of American independence.

In the Chipman house were two oil paintings of the elder and younger Ward Chipman respectively, and after the death of Mrs. Chipman, in 1876, these portraits were sent to Judge Gray of the Supreme Court of the United States. Judge Gray was a great grandson of William Gray of Salem, Massachusetts, who married a sister of the first Ward Chipman. (15)

NOTES.

(1) One of the early schoolmasters in St. John was Jeremiah Pecker. He graduated at Harvard College in 1757, and died at St. John in 1809, aged 70 years. He evidently at one time had the younger Chipman in his school. See note 15 post. The early years of New Brunswick saw many schoolmasters of fine education, strict discipline and successful instructors. The inauguration of the Common School System has banished that race of teachers; but in many respects their success, as instructors of youth, has not been excelled by their successors under different and apparently more favorable conditions.

(2) Stephen Sewell (see ante, page 183) continued his practice in Montreal till his death in 1832, from Asiatic cholera, aged 65 years.

(3) Edward G. Lutwyche, in 1776, left Boston with the British army on the evacuation of that place and went to New York, where he remained through the war. In 1783 he left for England, and in 1810 he was the Agent in London for New Brunswick. He died in 1816, when Thomas Bonner was appointed his successor.

(4) The office of Surrogate-General has been abolished, and each county of the Province now has

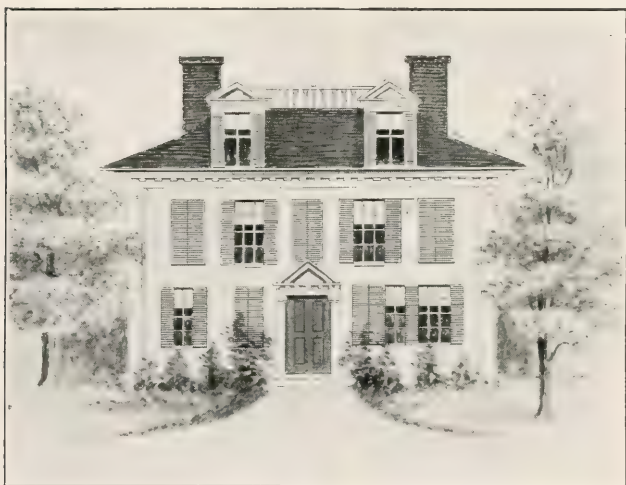
a Probate Court for administering estates and granting probates of wills.

(5) The following were students with Ward Chipman, Jr.: Robert Parker, William Harris Hailes, Neville Parker, Charles S. Putnam, D. Dudlow Robinson, George Stillman Hill, Robert F. Hazen, LeBaron Hazen, Francis E. Putnam. Many of these men became prominent in the affairs of the Province.

(6) Thomas Barclay was a son of the Rev. Dr. Barclay, rector of Trinity Church, New York. He graduated at King's College (now Columbia University), and studied law with John Jay. He was during the war Major of one of the Loyal American Regiments, and at its close went to Nova Scotia; was a member of the legislature, and speaker. From 1796 to 1829 he was in the service of the Crown, retiring on an allowance of twelve hundred pounds sterling per annum. He died at New York, 1830, aged 77 years.

(7) Jonathan Sewell, Jr., New Brunswick's first law student, became Chief Justice of Quebec. See the chapter on the elder Ward Chipman for fuller information relating to him.

(8) John William Ward, first Earl of Dudley, born August 9, 1781. He was a fellow pupil, subsequent to graduation at Oxford, with Lord Lansdowne, Lord Palmerston and Lord Ashburton, at Dugald Stewart's school. He was Foreign Minister in Canning's administration in 1827, and continued in that of the Duke of Wellington, but resigned with the followers of Canning in May, 1828. He was a man of very great eccentricity; was given to soliloquies; and, as he rehearsed to himself what he was going to say to others in different voices, it was said, "It is only Dudley talking to Ward." He strongly resisted the first Reform Bill in 1831. He died, unmarried, March 6, 1833.



HOUSE IN WHICH JONATHAN SEWELL LIVED AT CAMBRIDGE, MASS., 1776.
WHEN IT WAS MOBBED HE FLED WITH HIS FAMILY TO BOSTON.

(9) George Hamilton-Gordon, fourth Earl of Aberdeen, born 1784, died 1860. He succeeded to the Scotch earldom of Aberdeen on the death of his grandfather, in August, 1801, and shortly afterwards went on a tour of the continent, spending considerable time in Greece. On his return in 1803, he founded the Athenian Society, and wrote some for the *Edinburgh Review*. Byron, in his "English Bards and Scotch Reviewers," thus refers to him:

"First in the oat-fed phalanx shall be seen
The travelled thane, Athenian Aberdeen."

He was appointed Foreign Secretary in the Duke of Wellington's ministry in 1828, in place of Lord Dudley. In 1852, on the defeat of Lord Derby's ministry, Lord Aberdeen was called upon to form a government, which task he accomplished. His cabinet contained many brilliant men, having Lord John Russell as Foreign Secretary; Lord Palmerston, the Home Department; the Duke of Newcastle, War and the Colonies, and Mr. Gladstone, Chancellor of the Exchequer. It was during his ministry, through pressure from Sir Stratford Canning and Lord Palmerston, the country drifted into the Crimean War. His government was defeated in 1855, owing to the great dissatisfaction occasioned by the management of that war. Sir Arthur Hamilton-Gordon, at one time Governor of New Brunswick, was a son, and Lord Aberdeen, formerly Governor-General of Canada, a grandson.

(10) Frederick John Robinson, Viscount Goderich, and afterwards first Earl of Ripon, born 1782, died 1859. When Canning died, in 1827, Goderich was chosen by the King to form a government, and succeeded in the attempt. It soon became apparent he was unfit for the post of Prime Minister, and, after the battle of Navarino, on January 8, 1828, he tender-

ed his resignation, which was accepted. He became Secretary of State for War and the Colonies on the formation of Lord Grey's administration, November 22, 1830. He resigned the Colonial office in favor of Lord Stanley, and became, April 3, 1833, Lord Privy Seal, and ten days later was created Earl of Ripon. In May 27, 1834, with Stanley, Graham and the Duke of Richmond, he resigned office in consequence of the proposed appointment of the Irish Church Commission. He contended "the effect of the Commission must be to alter the footing on which the Established Church stood." This broke up the Melbourne administration; and when Lord Melbourne formed his second administration, in April, 1835, Lord Ripon was not included. He has been described as "an amiable, upright, irresolute man of respectable abilities and business-like habits." When Chancellor of the Exchequer, he was accustomed to indulge in sanguine views, and from this fact Cobbett nicknamed him "Prosperity Robinson," and the same writer, because of his lack of vigor as Secretary for the Colonies, called him "Goody Goderich." On his death, in 1859, he was succeeded by his only surviving son as second Earl. The latter was created Marquis of Ripon, January 23, 1871.

(11) Edward George Stanley, fourteenth Earl of Derby, born March 29, 1799. From Eton he went to Oxford, matriculating there October 17, 1817. He won the Chancellor's Latin verse prize in 1819, but left the university without taking a degree. In 1852, however, he was created D. C. L. His political life was a strenuous one, and frequently brought him into fierce conflict with O'Connell.

He brought forward, in 1831, the Irish Education Act, which created the Irish Board of National Education. It took in all denominations, but the education

was not entirely secular. It was favored by the Roman Catholic priesthood, and probably may be considered as successful as any measure relating to education in that country. He became, by his grandfather's death, October 21, 1834, Lord Stanley. He travelled in Canada in 1824. He joined Peel's administration in 1841 as Colonial Secretary, and in 1843 gave his support to the Canadian Corn Bill. From his speeches at this time, it is quite evident he favored preferential or free trade within the Empire, but not with foreign countries. He did not agree with Peel on the repeal of the Corn laws. He was called to the House of Lords in October, 1844, as Lord Stanley of Bickerstaffe. When Russell resigned, in 1851, he was asked to form a government, but failed. In June of that year his father died, and he became Earl of Derby. Lord John Russell again resigned in 1852, when Lord Derby succeeded in forming a ministry. The general election in July, however, went against him, but he held on to office till defeated on the budget, 16th of December, and was succeeded by Lord Aberdeen. Aberdeen's government was defeated January 29, 1855, on a motion for enquiry into the conduct of the war, and Lord Derby was sent for a second time to form a government, but he failed. He was again sent for in 1858, when Lord Palmerston resigned, and with Mr. Disraeli succeeded. He again, in 1866, was asked to form a government, and was successful. In the following year his government passed a Reform Bill, which has had far-reaching effects. He retired in February, 1868, and Disraeli became Prime Minister. He died at his family seat, Knowsley, near Liverpool, October 23, 1869. A son, Lord Stanley of Preston, the present and sixteenth Earl of Derby, was at one time Governor-General of Canada. Disraeli, in a sentence, summed up Lord Derby's political record: "He abol-

ished slavery, he educated Ireland, he reformed parliament." His scholarship was of a high order, and his translation of the "Iliad," the work of some years, in 1864, is a splendid monument to his literary attainments.

(12) Thomas Spring-Rice, first Baron Monteagle, born 1790, died 1866. He graduated at Cambridge in 1811, and from 1820 to 1832 represented Limerick, when he became member for Cambridge, and so continued till his elevation to the peerage in 1839. For a short time, in 1834, he was Secretary of State for War and the Colonies in Lord Melbourne's administration, succeeding Edward George Stanley. In seeking re-election at Cambridge, after accepting office, his opponent was Edward B. Lugden, afterwards Lord St. Leonards. The latter was beaten by only twenty-five votes. He was a contributor to the *Edinburgh Review*.

(13) Major-General Sir John Harvey, K. C. B., began his military career in 1800; he served both in India and Egypt. He was also Deputy Quartermaster General in the American War of 1812. The story is told that on one occasion he was opposed to General Winfield Scott, of the United States army. His gallantry was such as to attract the admiration of General Scott, and he gave directions to his soldiers not to fire at the dashing, handsome colonel. Sir John, after the war, was appointed Inspector-General of Police in Ireland, and in 1835 was appointed Lieutenant-Governor of Prince Edward Island. Two years later he was promoted to the Lieutenant-Governorship of New Brunswick, and under him responsible government was inaugurated in the Province. There was also at this time great commotion and angry feeling over the Maine boundary question. Here, again, he was brought into contact with his old opponent, General Scott, and it is generally conceded

the good sense of these two men preserved the peace between England and the United States. A difficulty took place in this connection between Sir John and the Commander-in-Chief in Canada, in consequence of which Sir John was dismissed. But, after explanation, he was rewarded with a K. C. B., and given the Governorship of Newfoundland. He was Lieut.-Governor of the latter Province at the time of the disastrous fire, June 9, 1846, and won golden opinions for his services on that occasion. In August of the same year he became Lieut.-Governor of Nova Scotia. Lady Harvey died suddenly at Halifax in 1851. The blow was a severe one for Sir John, and from it he never rallied. He died at Halifax, N. S., in March, 1852. A writer of observation and critical acumen says of him: "His merits as an able diplomatist and politician were rightly appreciated in Nova Scotia, but he has received scant justice from our local politicians and historians. We have only to contrast the violence and party animosity that existed under his predecessors, both excellent governors, to rightly value the tact and the ability with which Sir John Harvey managed all parties."

(14) Sir Edmund Walker Head, Baronet, born 1805, died 1868. He took first-class honors in classics and graduated at Oxford B. A. in 1827 and M. A. in 1830. In the latter year he was elected a Fellow of Merton College, which he retained till 1837. He was a close friend of George Cornwall Lewis, and edited the latter's "Essays on the Administration of Great Britain." He was appointed by Lord Grey, in October, 1847, Lieutenant-Governor of New Brunswick, and in 1854 became Governor-General of Canada. He was a friend of George Ticknor, who was the predecessor of Longfellow in the chair of modern literature at Harvard. Ticknor says of Sir Edmund: "He was one of the most accurate and accomplished

scholars I have ever known. He had been a good deal in Spain, and could repeat more poetry, Greek, Latin, German and Spanish than any person I ever knew." Ticknor had travelled extensively in Europe, and wrote a work of standard authority on Spanish literature. Similar tastes and pursuits would no doubt be a bond of union between them. Sir Edmund died suddenly of heart disease at his residence in Eaton Square, London, January 28, 1868, and on his death the baronetcy became extinct. His writings are extensive and of a high order.

(15) The following are some random notes from correspondence concerning the early days of Ward Chipman, Junior. The young Ward Chipman was born in St. John, New Brunswick, July 10, 1787, and he went on a visit, with his parents, to Salem, Mass., in September, 1797. He seems to have remained in the family of his aunt, Mrs. Gray, for several years for the benefit of his education. Reference to his course at Cambridge will be found in the Winslow Papers, pages 525 and 539. A packet of seventeen letters written by young Chipman to his father and mother has been preserved, carefully filed and endorsed by his father. In these letters he speaks in ingenuous fashion of his school life, as the following extracts will show. In a letter, of date September 13, 1797, he says: "We study Virgil, Monday and Tuesday in the forenoon; Greek every afternoon; Wednesday and Saturday forenoon read Latin; Thursday and Friday forenoon study Tully." Again, in a letter of October 19, 1797: "I like Mr. Biglow very well, and think he is an excellent master. He does not make use of any corporal punishment, which I think is very right, but he has got a stand, and whoever whispers must go there and stay until he finds another whispering, and then he goes to his seat and another comes up." Again, on November 19, 1797,

in a letter to his father, he speaks of calling upon the widow of Jonathan Sewell, then in Boston. He says: "Mrs. Sewell pulled a lock of my hair out, which she put into a locket with some of yours, and she said that she intended to get some of mama's when she saw her next. She said she expected to go to Canada in about six weeks. She said that her son, J. Sewell, had lost his son, a very fine, plump fellow, indeed. I wish, sir, you would present my most affectionate love and respect to mama all the family, and all my friends, and old Master Pecker, if he is not drunk when you see him, as I fancy he will be." (See Note 1 of this sketch). In a letter dated at Salem, November 27, 1797. William Gray writes to his father as follows: "Ward is a charming boy. I think he will be all that you can wish. I sometimes tell him that he must become a subject of the United States, but he says, 'No, no, no, I never will desert the British cause or government;' so you see that he is a true son." Again, in a letter from Mrs. Gray, November 27, 1797: "Chip is really a very good, manly boy, and will continue so without much effort; he is generally in fine spirits, but sometimes casts a longing look towards home. The young scribe writes with so much ease, I refer you to him for entertainment." Again, on December 17, 1797, young Chipman, speaking of his dancing lessons, says: "I believe I am too clumsy even to walk a minuet handsomely." Speaking of the last arrival of news of Admiral Duncan's complete victory over the Dutch fleet, he remarks: "This is certainly very good news, but I wish it had been French rather than Dutch, as they are forced into slavery. You will think I am quite a politician. As there are no Englishmen here, I have to stand them all, for they are all thorough Americans." A letter of January 28, 1798, indicates young Chipman's great natural ability. He construes at sight

the lines his father writes from Virgil, including the line "*Omnis in Ascanio cari stat cura preantis*" (all the care of a dear parent rests in Ascanius). Says that he has gone through John and Matthew in Greek, "which he thinks very easy." He wrote to his parents every week, and kept exact accounts of his expenses, which, it must be admitted, was very good for a boy of ten or eleven years old.

NOTE.—On page 225, ante, it is stated that Judge Cochrane's mother was a sister of Bishop John Inglis. This is a mistake. His mother was Jane Allen, daughter of Col. Allen. His sister, Georgiana Cochrane, was married to Bishop Inglis.—Ed.



SIR JAMES CARTER.

From a portrait in possession of Mr. Justice Barker.

CHAPTER XIV.

HON. SIR JAMES CARTER.

On the death of Chief Justice Saunders, the Bar expected Attorney-General Peters or Judge Bliss would succeed to the office of Chief Justice, and Solicitor-General Robert Parker to the position vacated by either. The following correspondence, with reference to the filling of judicial appointments in New Brunswick, is interesting and of importance:

FREDERICTON, NEW BRUNSWICK,

SIR:

4 June, 1834.

In the event of one of the puisne judges of this province being selected for the vacant office of Chief Justice, I beg to be permitted most strongly to recommend the following order of succession to your most favorable consideration: Mr. Solicitor General Parker to be a puisne judge, Mr. Advocate General George F. Street to be Solicitor General, Mr. John S. Saunders, son of the late Chief Justice, to be Advocate General. Should His Majesty be pleased to appoint the Attorney General to the Chief Justiceship, I should be glad to recommend the Solicitor General Parker as his successor, Messrs. Street and Saunders filling the vacancies in succession as above suggested.

I have, etc.,

ARCH. CAMPBELL.

RIGHT HON. E. G. STANLEY,

Colonial Office.

The following is the memorial of Robert Parker in respect of the proposed appointments:

ST. JOHN, NEW BRUNSWICK,

SIR:

May 7, 1834.

May it please Your Excellency: As the death of the late Chief Justice Saunders, will, it may be presumed, occasion a vacancy, either in the attorney generalship or a puisne judgeship of the Supreme Court of this province, I beg to make my humble application through Your Excellency to His Majesty's Government for the vacant office, and to solicit Your Excellency's nomination to which ever appointment may remain to be filled up when a new Chief Justice is to be

appointed. With my standing and character in the profession to which I have been brought up, and in which I have practiced for nearly seventeen years, Your Excellency is sufficiently acquainted. I have already held during several years, inferior, though very responsible judicial stations, namely, the recordership of St. John, and the office of Judge of the Court of Vice-Admiralty, which latter place I accepted at the request of the late Lieut.-Governor, and continued to hold until I received Your Excellency's permission to resign, as interfering with my duties as a Crown Lawyer. In 1828, on the death of Attorney General Wetmore, Mr. Peters, the Solicitor General being absent in England, I received the temporary appointment of Attorney General, and discharged all the duties of that appointment for nearly six months, during which occurred the first trial for offences arising out of the unsettled Boundary Claims of the United States. My conduct on that occasion, I am happy to say, received the approval of His Majesty's Government. This temporary appointment required my whole attention, and was necessarily attended with abandonment of other business, though productive of little emolument as almost all the Grant Fees, then the principal source of the Attorney General's income, had been paid to the former officer in anticipation. On Mr. Peters' return to the Province, with a permanent appointment of Attorney General, at the same time I had the honor of being Solicitor General, the duties of which, neither few nor inconsiderable, I have since discharged faithfully, and I trust satisfactorily, though with scarcely any other remuneration than that which the hope of promotion affords. As a mark of Your Excellency's good opinion, I may venture to refer to my nomination as one of the Commissioners of the judicial enquiry instituted at the request of the Assembly, the duties of which were performed gratuitously, I have further had the gratification of learning from Your Excellency that the honor of a seat in the Legislative Council, for which without any solicitation on my part you were pleased to recommend me, had only been withheld on the ground of my Crown appointments. I complain not of the decision, though the necessary consequence is, the advancement in rank of others, who have not perhaps deserved better of the public than myself. I beg in conclusion to remark that in the hope of succeeding to the Bench of the Supreme Court, either direct or through the office of Attorney General, I have devoted most of my time of late years to the higher branches of the profession; avoiding employment unconnected therewith. I may safely, I think, add that my

present application does not interfere with the just claim of any individual; that of the Attorney General, my only superior in rank at the Bar being confined to the chief justiceship, to which I do not aspire.

I have, etc.,
SIR ARCHIBALD CAMPBELL,
Lieut.-Governor.

ROBERT PARKER,
Solicitor-General.

The following is also the memorial of John Simcoe Saunders in respect of the same proposed vacancies:

To the Right Honorable Secretary of State for the Colonies:

SIR:

That in consequence of the death of your Memorialist's father, the late Chief Justice, I take the liberty of soliciting the appointment of a puisne judge, if a vacancy should occur on the Bench, by the removal of one of the Judges to the chief justiceship, or any other situation which might be vacated by the removal of any of the Crown officers. I cannot but hope for the favorable consideration of His Majesty's Government. Having graduated at Oxford, and received my legal education in England, in the office of one of the most eminent pleaders (1) of his day, I returned to this country and was admitted to the Bar of this Province in 1817, being senior, both in practice and standing to the Solicitor or Advocate General. After practicing extensively in the province, I returned to England, and was admitted to the Bar and remained some years. While there published an extensive work on "Pleading and Evidence," which had a rapid sale in England, and has been very generally used in the British Colonies, and several times printed in the United States. On the reception of this work by the profession, I think I may fairly rest my character as a lawyer on higher grounds than most Colonial Judges. In 1830, I returned to this Province, and was appointed King's Counsel, and recommended for the situation of Master of the Rolls, which was approved by Lord Goderich, but no adequate provision for its support being made by the Legislature, the appointment was not made. Subsequently, I was appointed a member of both His Majesty's Executive and Legislative Councils, without any solicitation upon my part. I trust therefore on this occasion my claim will receive your gracious consideration.

Your dutiful and obedient servant,

JOHN SIMCOE SAUNDERS.

Fredericton, New Brunswick,
2nd June, 1834.

It is not generally known that the late Honorable Edward B. Chandler was ever an applicant for a Judgeship in the Province of New Brunswick; but such, however, is the case, as appears from the following correspondence:

SIR:

NEW BRUNSWICK, June 4, 1834.

Persuming I am not wholly unknown at the Colonial Office, having had the honor of an interview with you in my official capacity, as one of the delegation from the House of Assembly of this Province, will you permit me, Sir, to express a hope that among the changes and promotions that must necessarily take place in this Province, in consequence of the death of the Chief Justice Saunders, any claims that I may have, from my standing at the Bar, as one of the senior barristers, and from an honorable and faithful discharge of my professional duties, may be had in consideration. Being the descendant of an American Loyalist, I trust I have always been actuated by the same spirit of loyalty, that led him to seek an asylum in New Brunswick.

I have, etc.,

RIGHT HON. E. G. STANLEY,
Colonial Secretary.

EDWARD B. CHANDLER.

The appointment of Ward Chipman, the Junior Judge, to the Chief Justiceship on the death of the Hon. Saunders, was a great surprise; but a greater one was the appointment to the vacant Judgeship. Nothing in the annals of the Bar created such a feeling of surprise and disappointment as that of Mr. Carter to the Bench of the Supreme Court. The following is the communication announcing his appointment:

SIR:

DOWNING STREET, 20 July, 1834.

I take the present opportunity of acquainting you, that I have recommended Mr. Carter for the seat on the Bench, which will be vacated by Mr. Chipman's advancement. In reference to the application I have received from Mr. Chandler on the subject, you will inform him that all the changes consequent on Mr. Saunders' death are completed, and will assure him that although he is not included in them, I have no doubt of those respectable qualifications in him, to which, you bear testimony.

I have, etc.,

T. SPRING-RICE.

SIR ARCH. CAMPBELL.

The following editorial from one of the newspapers of the day gives expression to the prevalent discontent in respect of Judge Carter's appointment:

We regret to find that His Majesty's Government should appoint a gentleman from England a puisne judge of our Supreme Court to the entire neglect of promotion of talent and respectability of the Bar of this Province. The gentlemen who now hold the situation next in rank to a seat on the Bench, and have proved themselves eminently qualified to be promoted, ought not to be overlooked in the recent vacancy, and we hope, though they may be personally unknown to the givers of promotion, that their just claims will be respectfully made known to His Majesty King William the Fourth, whom we feel assured will not turn a deaf ear to the claims of just merit.

Before it was known in New Brunswick who was to be appointed to the Chief Justiceship, Judge Bliss was dead; Attorney-General Peters looked on him as his rival, and at once renewed his claim for the office.

A meeting of the Bar was held at the Court House, Fredericton, October 22nd, 1834, to protest against the action of the Home Government. There were present: Attorney-General Peters, Advocate-General Street, John Simcoe Saunders, Charles S. Putnam, Neville Parker, John Ambrose Street, William Tyng Peters, Edward B. Chandler, William Wright, Moses H. Perley, Charles P. Wetmore, A. K. S. Wetmore, George J. Dibblee, J. U. Chandler, D. Ludlow Robinson, George Cleary, G. F. S. Berton, Alfred L. Street, L. A. Wilmot, William H. Needham, Charles Fisher.

Attorney-General Peters was in the chair. The Advocate-General, from a committee previously appointed, reported the following resolution, which, being fully discussed, it was resolved the same be signed by the chairman and published in the *Royal Gazette*:

(1). That the members of the Bar view with deep regret the appointment of a gentleman from England, who is a

total stranger to the Province, to fill the important position of a Judge of the Supreme Court.

(2). That the practice which has prevailed in this Province nearly the last half century, of selecting Judges from the members of the Province resident therein, has given just grounds to believe that hitherto, in the opinion of the Home Government, the Bar of the Province affords men sufficiently qualified to fill the judicial situations, and they would fairly hope that the present state of the profession, now greatly increased in numbers, does not furnish any just ground for deviating from that practice.

(3). That the high and important nature of the judicial situation, thus held further as an object of attainment by members of the Bar, has afforded a strong stimulus to honorable exertion in the pursuit of legal knowledge and in the practice of the profession; and that its operation has been highly beneficial as well to the Bar as the country; while the removal of this incentive in depriving the Bar of this prospect of advancement must necessarily tend to degrade the profession at large and to discourage those who, by talent and character, have a right to look forward to promotion.

(4). That a measure of this kind, having a tendency to drive men of honorable feeling from the practice of the law, and to place it in the hands of those who are actuated solely by the hope of pecuniary interest, must have a pernicious effect upon the well-being of the country at large, to which it is a matter of the highest interest that men of talent, honor and integrity should fill the profession.

(5). That the various modifications of English law and practice which arise from local circumstances, as well as the numerous enactments of the Provincial Legislature, imperatively require a due course of study and also experience in the Colonial Courts, in order to qualify a Judge satisfactorily to discharge the important duties of his office.

(6). That we feel bound, as well in justice to the profession of which we are members as to the country at large, in which our lot is cast, to address an humble and respectful memorial to His Majesty embodying the sentiments contained in the foregoing resolutions, and praying that His Majesty will be graciously pleased by some mark of His Royal favor to reward the gentleman recently appointed, and at the same time to restore to the Bar of New Brunswick the

gracious countenance and protection which it has heretofore enjoyed; and lastly

Resolved:—That His Excellency be respectfully requested to forward such Memorial with such remarks as His Excellency may deem proper to make.

CHARLES J. PETERS,
Attorney General,
Chairman.

D. LUDLOW ROBINSON,
Secretary.

Mr. Parker, from a committee previously appointed for that purpose, reported a draft of an address to the Throne formed upon the foregoing resolutions, which, having been duly considered and approved, was ordered to be engrossed for signature by members of the Bar throughout the province.

The foregoing resolutions were duly transmitted by the Lieutenant-Governor to the Colonial Secretary in England, to which was received the following reply:

DOWNING STREET, 20 February, 1835.

SIR:

I have the honor to acknowledge the receipt of your dispatch of the 30th of December last, transmitting a petition from certain members of the Bar of New Brunswick against the appointment of Mr. Carter to the Provincial Bench, in reply to which I beg to assure these gentlemen that their claims to preferment in their own courts would always be weighed with the utmost care on future vacancies, and that His Majesty would prefer a barrister of their body as a candidate for vacant judgeships in the Province to an English barrister, not only when the pretensions of a Colonial and English candidate might be equally balanced, but also whenever there was not some evident necessity for introducing a stranger to the Bench. Respecting Mr. Carter, I would observe that having been appointed by His Majesty, on the advice of my predecessor (2), as a person of acknowledged fitness from the character which he bore in his profession, it is impossible to remove him so long as he conducts himself properly. At the same time I must observe that if with Mr. Carter's full concurrence, and consistently with the interest of the public service, any arrangement could be made for the

transfer of that gentleman to another judicial office, I would cheerfully concur in it, although at present, I can perceive no reason that it will be in my power to mature such a scheme.

I have, etc.,

SIR ARCH. CAMPBELL.

ABERDEEN.

A commission under the Great Seal appointing Ward Chipman, William Botsford, James Carter and Robert Parker, or any one or more of them, Commissioners for the purpose of administering the oaths prescribed by law for members of the House of Assembly being produced, and James Carter, one of the Commissioners therein named attending, the members present took the oaths and subscribed the declaration.

Isaac Woodward, a member for the City of St. John, having refused the oath upon the grounds of his being of the profession of the people called Quakers, made solemn declaration or affirmation as prescribed by the Act of Assembly, 26 George III, chapter 19, and subscribed thereto, whereupon the several members took their seats. The following entry shows that Judge Carter received fair remuneration for swearing in the members: "To the Hon. James Carter, one of the Commissioners appointed to administer the oaths to members returned to serve in the General Assembly, the sum of thirty pounds."

At the Court of *nisi prius* and *oyer and terminer*, in June, 1835, at St. John, Judge Carter took his seat on the Bench, when he received the following address from the Grand Jury:

SIR:

[The Grand Jury for the City and County of St. John, now assembled, cannot allow the favourable opportunity offered them on this, the first occasion of your Honor's presiding in this Court, to pass away without an expression of the feeling with which the event is contemplated by them. Coming among them as your Honor does, by the exercise of the undoubted prerogative of the Sovereign of the British Realms,

and thoroughly unaffected by the influence of any family, or local, or political character, or predilection whatsoever, the grand inquest of this City and County are convinced that the attention of your Honor to the judicial establishment of the Province cannot but greatly tend to sustain and confirm that purity and impartiality which have been eminently displayed on this Provincial Bench, and which are so inseparable from the due administration of justice, and therefore that the uninterrupted exercise of your Honor's talent, urbanity, and unprejudiced decision may long be spared to this portion of His Majesty's Dominions, is the present desire of this Jury.

THOMAS MERRITT,

Foreman.

Judge Carter returned to this address of the Grand Jury the following reply:

Mr. Foreman and Gentlemen of the Grand Jury:

I receive the address which has been just handed to me with feelings of unfeigned pleasure and satisfaction. When I entered this city nothing would have been more unexpected by me than that I should receive a mark of respect and attention from any body of persons in this province.

The language of congratulation and good feeling, however, is always welcome to every man, more especially when that language is unexpected and novel, and proceeds from so highly respectable and highly influential a body as the Grand Jury of this county must necessarily be. I cannot attribute this mark of your respect as due to any personal merit of my own, but I look on it as caused by a feeling of respect and honor for the source whence my appointment to this situation is derived, and in some measure perhaps by the circumstances under which the appointment was received in this province. My residence here is of course under all circumstances a matter of uncertainty—it may be long and it may be of very short duration. But be that as it may, as long as I hold the very responsible situation in which I have been placed, it will be my most fervent and anxious wish to discharge its important duties with that strict impartiality which should be the sole guide of every person who holds a judicial situation, whether of a higher or lower degree. And I can assure you that whether I reside here or elsewhere I shall always look back on this flattering token of respect and good feeling with unmingled satisfaction.

I have, etc.,

J. CARTER.

The general elections of 1846 were the first under the law providing simultaneous polling in one day instead of as prior thereto of eight days. In the new House the Bar was ably and largely represented by John W. Weldon, William End. L. A. Wilmot, John Ambrose Street, Charles Fisher, Robert L. Hazen, William Carman, Andrew Barbarie and William J. Ritchie. The debating powers and legal attainments of the new House were of a very high order, and it was at this election William J. Ritchie and Robert D. Wilmot took their seats for the first time; the first steps to the high positions they were called upon in after years to fill.

The following gentlemen were members of the government: Hon. George Shore, Hon. Hugh Johnston, Hon. E. B. Chandler, Hon. R. L. Hazen, Hon. Charles J. Peters, Hon. Thomas Baillie, Hon. Alex. Rankin, Hon. George S. Hill.

Attorney-General Peters died in 1848, having held the office twenty years, the last to fill the office under a life tenure. The question of a successor to the office was one of much embarrassment to the government, increased by reason of the Lieutenant-Governor, Sir William Colebrooke, being about to leave the province. The following is the letter of the Lieutenant-Governor to the Colonial Secretary in respect of this vacancy:

FREDERICTON, NEW BRUNSWICK,
8 February, 1848.

MY LORD:

I do myself the honor to report to your Lordship the demise on the third instant of the Hon. Charles J. Peters, the Attorney-General of this Province and a Member of Council. This event is one of much regret to the friends of an old and faithful servant of the Crown, has led to a question of much moment at this time, and Sir John Harvey having laid before the Legislature of Nova Scotia a copy of Your Lordship's despatch to him of 31st March, 1847, and which appeared in

the public journals of both Colonies, the House of Assembly passed a resolution to address me for a copy of any despatches I might have received from Your Lordship relating to the tenure of public offices or the subject of responsible government. The decision not to fill up the vacancies by the death of Mr. Peters, and which, on whatever tenure the appointments have been made, would have led to party divisions in the Assembly. I hope the public business will proceed uninterruptedly through the remainder of the session. The reconstruction of the Council at this time would necessarily have involved some delay and much discussion, as the subject would have engaged the legislative bodies to the neglect of all other business. I have had every reason to avoid such a dilemma. I am aware, however, that when a successor has been appointed, it has not been usual to fill up important offices, unless the public service has required it, and I the more willingly abstain in this case, as the gentlemen who have preferred their claims to me have willingly acquiesced in this course, feeling every assurance of my disposition to do justly to them in my communication to Your Lordship. I will not enlarge upon it at present, but revert to applications of gentlemen who are the candidates for the vacant appointments. The first of these, Mr. William B. Kinnear, a member of the Legislative Council: he was appointed Solicitor-General as successor to Mr. George F. Street, now a Judge of the Supreme Court, in 1845. My despatch of 12th and 29th of October of that year will explain the grounds of my recommendation in his favor. I consider that Mr. Kinnear has established a just claim to succeed to the office, the prospect of which induced him to take one of inferior emolument at Fredericton and to relinquish his professional business at St. John. Mr. Kinnear is fully aware of the views of Your Lordship in regard to the principles of government likely to obtain in this province and would be fully prepared to take part in any Responsible Government Constitution, under proper guarantees, and to maintain his position as a member of the Executive Council. The applicant for the situation of Solicitor-General is John Ambrose Street, who was an applicant in succession to his brother, Mr. Justice Street, in 1845, and although from circumstances which had occurred I felt precluded from recommending him at that time for the situation, I feel it would be just to him to state that these objections are entirely removed, and so far as my personal wishes are concerned I should therefore be glad if

Mr. Street were to be appointed to the vacancy. I am at the same time bound to suggest that the professional gentlemen, at present in the Executive Council, have claims to consideration which so far as they may be advanced, I could not with justice overlook. The Hon E. B. Chandler, a leading member of the Executive and Legislative Councils and a gentleman of distinguished talents, preferred through me his claims to professional advancement in 1845, and I beg to refer to his memorial which accompanied my despatch of 14th November of that year; and he has reminded me of these claims, and I am bound to observe that Mr. Chandler's pretensions are of a high order and that his services in the Executive Council have strengthened his pretensions. I do not think that Mr. Chandler or Mr. Hazen, who, though a junior barrister, is a leading member of the Bar and an influential member of the Executive and of the Assembly, would be disposed to accept the office of Solicitor-General and to remove to Fredericton, except from political considerations, and both might aspire to the higher preferment and the Bench should the infirmities of the Chief Justice compel him to retire. Indeed, on the reconstruction of the Executive Council on a Responsible principle, the pretensions of neither of these gentlemen would not be likely to be overlooked. All that I would observe on this occasion that any appointments now made without a reference to this principle, are more necessarily binding on the government in the event of such a change in the Constitution of the Government as would alter the tenure on which they might hereafter be held with other principal offices at the seat of Government.

I have, etc.,

W. M. G. COLEBROOKE.

RIGHT HON. EARL GREY,
Colonial Secretary.

The Hon. E. B. Chandler was an applicant for the office of Attorney-General, as appears from the following letter:

FREDERICTON, February 8, 1848.

MY DEAR SIR WILLIAM:

Having as a member of the Government advised Your Excellency that the appointment of a successor to the office of Attorney-General should be delayed until the arrival of Sir Edmund Head, it may not be considered proper, at, present, to urge my claims which my standing in the profession and

public services would give for the favorable consideration of Your Excellency, but having understood from Your Excellency that the application of others, not members of the Executive, for the situation, would be forwarded to England, I consider it due to myself to state to Your Excellency that I do not wish to be understood as waiving those claims when the proper time arises for their consideration.

I have, etc.

EDWARD B. CHANDLER.

HIS EXCELLENCY SIR W. M. G. COLEBROOKE.

From the despatch of Governor Colebrooke, it appears that he regarded the claims of Solicitor-General Kinnear to the Attorney-Generalship as the first, as during the whole history of the province the office of Solicitor-General had been a stepping stone to the Bench; the elder Ward Chipman, John Murray Bliss, Wm. Botsford, Ward Chipman, Jr., Robert Parker and George Frederic Street, held the office when appointed to the Bench. Attorneys-General Wetmore and Peters declined puisne judgeships. Before any appointment was made, Sir William Colebrooke left the province, and was succeeded in office by Sir Edmund Walker Head, who, accompanied by Lady Head and family, and his private secretary, Mr. Pennefather, arrived at St. John on the morning of April 7, 1848, in the steamer "Saxe Gotha" from Windsor, Nova Scotia. The Governor and family came on shore shortly after the steamer's arrival and proceeded in Sir William Colebrooke's carriage to the St. John Hotel, where he was received by a guard of honor of the 33rd Regiment, under command of Major Blake; the band played the National anthem. The citizens who were assembled also welcomed His Excellency with three hearty cheers. The following announcement appeared in the *Royal Gazette* extraordinary, April 11th, 1848:

His Excellency Sir Edmund Walker Head, Baronet, having been appointed to succeed His Excellency Sir William

MacBean George Colebrooke, K. H., as Lieutenant-Governor of the Province, came this day to Council Chamber, and presented his commission, which, being read, His Excellency took the usual oaths and assumed the administration of the Government.

By His Excellency Sir Edmund Walker Head, Baronet, Lieutenant-Governor and Commander-in-Chief of the Province of New Brunswick, etc., etc., etc.

A PROCLAMATION.

Her Majesty having been pleased, by Her Royal Commission this day published, to constitute and appoint me to be Lieutenant-Governor of this Province of New Brunswick, the administration of the Government of which I have this day assumed, I do therefore publish this proclamation; of which all persons concerned are required to take due notice and govern themselves accordingly.

Given under my hand and seal at Fredericton, this eleventh day of April, in the year of Our Lord one thousand eight hundred and forty-eight, and in the eleventh year of Her Majesty's reign.

By His Excellency's command,

JOHN S. SAUNDERS.

Richard Pennefather, to be private Secretary to the Lieutenant-Governor.

Sir Edmund Head's entrance on office was followed by unlooked-for changes which took place on the death of Attorney-General Peters.

The following composed the Executive Council: Hon. E. B. Chandler, Hon. R. L. Hazen, Hon. Alex. Rankin, Hon. George S. Hill, Hon. L. A. Wilmot, Hon. John R. Partelow, Hon. Charles Fisher, Hon. William B. Kinnear.

The Hon. John R. Partelow was appointed Provincial Secretary; L. A. Wilmot, Attorney-General; and William B. Kinnear, Solicitor-General. The latter for ten years had been a member of the Legislative Council; to a later date belong the unfolding of the developments which consummated the foregoing changes; and of all persons the most surprised, no

doubt, would be Sir William Coldebrooke; notwithstanding the fact that there were in the Government six members of the Bar whose highest ambition, it might be presumed, was to obtain a seat on the Bench. Attorney-General Wilmot brought in, as the first measure of the Government, the following resolution at the first session, which was carried by a vote of thirty-one yeas to two nays.

Resolved,—That the following reduction be made in the salaries now chargeable on the civil list but not to affect the present judges. Chief Justice, present salary £1096, future £700. Three puisne judges joint salaries £2250, future £1800. In addition to the salaries of the Judges, the fees averaged £100 to each Judge, and £250 were allowed for travelling, expenses to be divided among them.

The time had now arrived when Chief Justice Chipman felt that he could no longer, with interest to the public, continue in the office of Chief Justice. The following is the communication of the Lieutenant-Governor to Earl Grey suggesting proposed changes:

GOVERNMENT HOUSE, NEW BRUNSWICK,
August 26, 1850

DEAR LORD GREY:

In a private conversation at St. John, Chief Justice Chipman intimated to me his intention of resigning his seat on the Bench at the end of the present year. His reasons are his increased infirmities which make the discharge of his duties in Court very irksome to him. His mental faculties are unimpaired, and I am persuaded the public has benefited by the arrangements made with his colleagues, who have for several years past divided among them his duties on the circuit. He has thus given great attention to working up the material on which the judgments of the whole Supreme Court are based, and the Province will sustain a severe loss by his retirement. I have arranged with the Chief Justice that his formal resignation will be tendered when it will be most convenient for me to receive it, and I think myself fortunate in being on such terms with the Judges, as enables me to consult the public interests in the matter. According to the ordinary notion in England, the Attorney-General might be supposed to have a claim on the Chief Justiceship. I con-

ceive, however, that the present Attorney-General is a young man for this position, and one whose principal ambition has been, and is, more of a political than a legal character. I believe, moreover, that he would himself acknowledge Mr. Chandler's claim to a seat on the Bench to be at least equal to his own. It does not therefore seem to me at present expedient to offer the Chief Justiceship to Mr. Wilmot. It is possible something may arise to alter this view. With regard to the Solicitor-General, Mr. Kinnear, he is a good lawyer of old standing and an honorable man. Mr. Chandler is Queen's Counsel of old standing, and his services as Executive Councillor have been long continued without official salary of any kind from the Government. I think, therefore, he has a fair and undoubted claim to a seat on the Bench, for which certainly he is well qualified both by position and acquirement; at the same time I do not think he can complain in any way if the Government offer him a puisne judgeship, and for pursuing this course there are perhaps some reasons to be alleged.

Believe me yours, etc.,

RIGHT HON. EARL GREY.

EDMUND HEAD.

The above despatch, it will be observed, is negative in its character. While conveying the intelligence of the early resignation of the Chief Justice, and referring to Attorney-General Wilmot and the Hon. E. B. Chandler, it is evident neither is the choice for the first seat on the Bench. On that important point the despatch is silent. At the same time it clearly points to a member of the Bench, for while Sir Edmund Head and his council at this stage would not discuss the prospective vacancy, it is otherwise with him and the Bench, for he knew the wish of the Chief Justice was, that one of his associates should succeed to the office.

Judge Carter made application for the position, as the following letter shows:

FREDERICTON, NEW BRUNSWICK,

SIR:

26th October, 1850

Having been informed by the Chief Justice that he has tendered to Your Excellency his resignation of his seat on the

Bench, I beg to submit for your favorable consideration my claim to the office which will become vacant by such resignation. I have had a seat on the Bench of this Province more than sixteen years, and for nearly a third of that time have been the senior puisne judge. As regards Mr. Justice Parker, whose appointment was a short time subsequent to mine, I am authorized by that gentleman to state that he is willing to waive any claim he may have in my favor. Under these circumstances I trust my request will not be deemed unreasonable, but should Your Excellency feel any difficulty in granting it, I would beg that my application may be submitted for the consideration of His Majesty's Secretary of State before any decision adverse thereto is made.

I have, etc.,

JAMES CARTER.

HIS EXCELLENCY SIR EDMUND HEAD.

On December 3rd, 1850, Earl Grey, in reply, wrote as follows to Lieutenant-Governor Head:

I have therefore determined to follow the course which you have suggested, and have advised His Majesty to confer the office of Chief Justice on Mr. Carter; you are further instructed to offer the vacant puisne judgeship to Attorney-General Wilmot, and, should he decline it, to Solicitor-General Kinnear (3).

The following notice appeared in the *Royal Gazette* of January 2nd, 1851:

Her Most Gracious Majesty has been pleased to issue a warrant under the Sign Manual, directing the appointment of Hon. James Carter to be Chief Justice of the Province of New Brunswick; and the Lieutenant-Governor has appointed to that office accordingly.

A similar notice was issued as to the appointment of Attorney-General Wilmot to the vacant judgeship.

In the session of the Legislature in 1851, a measure was passed depriving the judges of fees, which called forth the following protest from Chief Justice Carter to the British Government:

FREDERICTON, NEW BRUNSWICK,

MY LORD:

8th May, 1851.

I much regret that I am obliged to trouble Your Lordship, in consequence of an Act of Assembly lately passed abolishing the fees, which, since the erection of the Province, have

formed an important part of the emoluments of the judges of the Supreme Court. I had hoped after Your Lordship's despatch of November, 1850, that some arrangements would have been effected on the terms proposed by the Lieutenant-Governor in his despatch of 14th May, 1849, and sanctioned by Your Lordship. To such an arrangement the judges would have assented, though it would on an average have reduced their actual income by £50 to £60 each. I was certainly not prepared to find without any previous notice or proposed compensation, a Bill introduced in the Legislature for the total and immediate abolition of the judge's fees, supported in opposition to Your Lordship's views and instructions by the majority of the Executive Council. I think it necessary under these circumstances to state distinctly to Your Lordship, this measure has been carried without any previous communication with the judges, and without their assent, which assent would be freely given to any measure permanently commuting their fees for the annual sum of £100, to be charged to the civil list of the Province in addition to their salaries now charged on that fund. The present measure, if assented to by Her Majesty, would bear with peculiar hardship upon me. Your Lordship is aware that I lately accepted the Chief Justiceship at a reduced salary of £700 currency, being £50 less than the salary I was receiving as a Judge, and nearly £400 a year less than my predecessor, by which arrangement an annual saving was effected on the Civil list, on the reduced scheme of salaries. The salary of £700 which is now received, was established by an Act of Assembly passed April 14, 1849, being 12 Victoria, Chapter 76, which gives that salary irrespective of fees; an arrangement which was urged, in the debates of that time, as preferable inasmuch as the requisite amount would be made up by fees varying with the amount of business and labor. It can hardly be contended that an annual income of £800 currency (which the proposed commutation would give me) is exorbitant for an office of so much trust and importance. I must therefore rely on your Lordship's protection, and trust that Her Majesty may not be advised, to give Her consent to any measure, for depriving the judges of their accustomed fees, without some certain provision for the compensation proposed by His Excellency, the Lieutenant-Governor, and sanctioned by Your Lordship, to which we offer our ready assent.

I have, etc.,

RIGHT HON. EARL GREY.

JAMES CARTER.

The following is Lord Grey's answer to the foregoing letter :

DOWNING STREET, 3 July, 1851.

SIR :

I have had under consideration the Act passed by the Legislature of New Brunswick for abolishing the fees received by the Judges of the Supreme Court of the Province. This Act of Assembly declares that no fees shall be received by the judges and provides no compensation in lieu of them. I have therefore to instruct you to apprise the House of Assembly that I find no reason to alter my opinion I have already expressed on this subject in my despatch of 25th of November last, and until the Legislature shall have secured to the existing Judges compensation for the loss of emoluments which they would suffer by this law it will not be in my power to submit it for Her Majesty's confirmation.

HIS EXCELLENCY SIR EDMUND HEAD.

I have, etc.,

GREY.

In 1859 Her Majesty conferred on Chief Justice Carter the honor of knighthood, the first in New Brunswick. At this time Chief Justice Carter had been on the Bench a quarter of a century. He remained on the Bench but a few years longer, feeling, no doubt, that the time had come, in consequence of advancing years for his retirement, as is shown by the following letter of resignation :

FREDERICTON, 26 June, 1865.

SIR :

I beg to tender to Her Most Gracious Majesty the resignation of my office as Chief Justice of this Province, such resignation to take effect on the first of September next; by that time I shall have held a seat on the Bench for more than thirty-one years, and for nearly half that time have held the office of Chief Justice. The constant increase of the duties of the bench, advancing age, and some warnings of failing health, convince me I am no longer equal to the official discharge of my duties, and it will be for my own interests, as well as that of the Province, that those duties should be transferred to other hands. I believe there are very few parts of Her Majesty's dominions where such length of service in such an office would not secure some provision for the

remainder of life. I am, however, well aware that the Province of New Brunswick forms one of those few exceptions, and that here there are no means at Her Majesty's disposal for effecting such an object. I therefore distinctly abstain from asking for that which I know Her Majesty has no power to grant, but which I think she would refuse with regret to one who has been so long in her service.

Yours, etc.,

JAMES CARTER.

HIS EXCELLENCY HON. A. H. GORDON.

Lieutenant-Governor.

The following despatch from the Colonial Secretary was received in answer to this letter of resignation:

DOWNING STREET, 13 December, 1865.

SIR:

I have received your despatch of 3rd July last, enclosing copy of letter from Sir James Carter, tendering the resignation of the office of Chief Justice of New Brunswick and your reply, conveying the acceptance of that resignation. I have also received your despatch of 20th ultimo, enclosing the copy of an address presented to the late Chief Justice and advertising to your recommendation that he should receive honorary mark of Her Majesty's favor on the occasion of his retirement from the services of the Crown. Your letter to Sir James Carter, and the address which has been presented to him, contains the most gratifying evidence of the high estimation in which his character and services have been held by yourself and the community at large. But although I am very sensible of the merits of Sir James Carter, I have not felt at liberty to recommend to the Queen he should receive any fresh mark of Her Majesty's approbation. It is with much regret that I find myself unable to adopt your recommendation, but it has not been by any means usual to confer on the holder of similar judicial offices any further honor than that of knighthood, which Sir James Carter has already received.

I have, etc.,

E. CARDWELL (4).

HON. A. H. GORDON,

Lieut.-Governor.

Shortly after his resignation, the Chief Justice, with his family, left for England. On his arrival in

the province in 1834 to enter on his duties as a Judge, he was accompanied by Mrs. Carter. They were met at Digby by Sheriff Miller and his daughter, Miss Miller, of Fredericton. Under the somewhat peculiar circumstances in which the Judge was coming to the province, the meeting to Judge Carter would be most pleasing, and, on the part of the Sheriff, it was a thoughtful act, and was subsequently crowned by a recognition at the time most unexpected.

Judge Carter's first residence was opposite Fredericton. Mrs. Carter died in 1842, aged thirty-nine years, after a residence in New Brunswick of eight years. On June 1st, 18~~3~~⁴4, Judge Carter married Miss Miller, the daughter of Sheriff Miller, (5) and a granddaughter of the Hon. Edward Winslow, formerly a Judge of the Supreme Court of New Brunswick. The second Mrs. Carter died in 1851, leaving two sons, James Colebrooke and Edward Carter. In 1852, the year after his elevation to the Chief Justiceship, he married, as his third wife, Margaret, daughter of Archdeacon Coster. They had one daughter, who, in 1878, married Henry L. Hunter, J. P., Beach Hill, West Reading, England. Sir James Carter died at the residence of his son, James Colebrooke Carter, Mortimer Lodge, Birks, March 10th, 1878, aged seventy-three years (6).

NOTES.

(1) John Simcoe Saunders studied law in London with Joseph Chitty, the eminent pleader and writer on many branches of law. Chitty's works are to-day (1906) well known and authoritative text-books for lawyers in Great Britain, the Colonies and the United States. Saunders on Pleading and Evidence is an excellent work, and has gone through many editions. See note ante, page 274.

(2) Four days after the death of Chief Justice Saunders, May 28, 1834, T. Spring-Rice succeeded E. G. Stanley as Colonial Secreary, in consequence of a change of government, and to this circumstance it has been stated Sir James Carter owed his appointment to the Bench of New Brunswick. His cousin, J. Bonham Carter, a member of parliament at the time for Portsmouth, was a friend and supporter of the new Colonial Secretary, Spring-Rice, and it is supposed used his influence with the Secretary for the appointment.

(3) The Hon. William B. Kinnear was a son of Andrew Kinnear, of the Commissariat Department, and a member for Westmorland County in the first House of Assembly. The son studied law at St. John in the office of Charles J. Peters, and in 1819 was admitted an attorney. In 1830 he was one of the members for the City of St. John, and the same year was appointed Recorder of that city. He became Judge of the Court of Vice-Admiralty in 1833, and in 1839 was appointed to a seat in the Legislative Council. When, in 1846, he became Solicitor-General, he resigned the offices of Recorder and Judge of the Court of Vice-Admiralty and removed to Fredericton. As the Attorney-General was advanced in life, and the Chief Justice unable to attend to circuit work, vacancies in both of these offices seemed imminent in the near future; and it was customary, in case of a vacancy, for the Solicitor-General to go on the Bench. In 1848 the Attorney-General died, and, in 1850, the Chief Justice forwarded his resignation. It was no doubt a knowledge of existing circumstances as regards these officials which induced Mr. Kinnear to accept the office of Solicitor-General and remove to Fredericton, as the acceptance involved large sacrifices. From his age, standing at the Bar, position in

the Legislature, promotion in his profession would naturally be looked on as quite regular and certain, and was so viewed by Sir William Colebrooke, the Lieutenant-Governor, in his strong recommendation of Mr. Kinnear for the office of Attorney-General, and yet he failed in the object of his laudable ambition. In 1851, consequent on the resignation of Chief Justice Chipman, he was on the verge of appointment to a Judgeship. Had Attorney-General Wilmot declined it, the instruction of the Colonial Secretary was to offer the Judgeship to Mr. Kinnear. When the change of government took place in 1854 he lost the office of Solicitor-General, and returned to St. John to reside. He was appointed Clerk of the Peace and Judge of Probate for St. John. He died in 1868, aged 72 years. His failure to attain a seat on the Bench was due to the introduction, by Sir Edmund Head, of the principle of responsible government. Mr. Kinnear was an unassuming, high-minded Christian gentleman. At the time of his death he resided at 18 Charles Street, St. John.

(4) Edward Cardwell, the son of a Liverpool merchant, was born July 24, 1813. He was educated at Winchester and at Balliol College, Oxford, of which latter he became scholar and fellow. At the university, in 1835, he took first class in both classics and mathematics. Among his contemporaries were W. E. Gladstone, Robert Lowe, Sidney Herbert, Roundell Palmer and the Duke of Newcastle. He studied law, but abandoned that profession for political life. He lost his seat for Liverpool in 1852 in consequence of his voting against the navigation laws. He then became member for Oxford. His opponent at Oxford was Thackeray. He was a strong supporter of Sir Robert Peel and his policy, and in the Coalition government of Lord Aberdeen, in 1852, he was President of the Board of Trade, and under his presidency

and auspices was passed the Merchant Shipping Act, 1854. He became Secretary of State for the Colonies in 1864, and through his influence, largely, imperial troops were withdrawn from the Colonies. When Mr. Gladstone resigned office in 1874, Mr. Cardwell was called to the House of Lords as Viscount Cardwell of Ellerbeck. He died February 15, 1886, and was buried in the cemetery at Highgate. His peerage became extinct at his death.

(5) Edward Miller, High Sheriff of York, died at Fredericton in 1847, in the 76th year of his age.

(6) Sir James Carter was the only child of Captain James Carter, of Portsmouth, England. Captain Carter, after his retirement from the army, resided at Portsmouth, and for some time was Mayor of that town. His son James was born there January 25th, 1805, and received his early education at Rev. E. Cogan's school at Walthamstow, and had for one of his school-fellows Benjamin Disraeli, afterwards Earl of Beaconsfield and Prime Minister of Great Britain and Ireland. After leaving this school he went, in 1820, to Manchester College, York, presided over by the Rev. C. Wellbeloved, whose youngest daughter, Emma, he married in 1831. From this seat of learning he went, in 1823, to Trinity College, Cambridge, where he remained two years, after which he entered the Inner Temple and studied law under his cousin, John Bonham Carter, M. P., and also under Sir William Follett. He was called to the Bar in 1832, and went the Western Circuit till, in 1834, he was appointed a Judge of the Supreme Court of New Brunswick. The appointment created much remonstrance from the New Brunswick Bar, and properly so, under the circumstances. The high judicial and personal qualities of Mr. Carter at length justified the appointment. The resolutions of the Bar were forwarded to Judge Carter after his arrival, but it was distinctly stated

that nothing was intended by them in any way reflecting on the learning or character of Judge Carter. The following private note from the Colonial Secretary, T. Spring-Rice, contains the offer of the appointment:

COLONIAL OFFICE, July 11th, 1834.

SIR:

It gives me much pleasure to find it in my power to make you an offer which I feel is justified by the strong testimony to your character and attainments which I have from several quarters received. A vacancy on the judicial bench of New Brunswick enables me to propose to you the acceptance of the office of third puisne judge in the Colony. The salary and emoluments are at least £700 a year. I have only to add that your determination must be taken with as little delay as possible, and that I have a very sincere desire that my proposal may prove acceptable to you.

I have the honor to be,

Your obedient servant,

T. SPRING-RICE.

JAMES CARTER, ESQ.

The offer was accepted by Mr. Carter, and his appointment, as already indicated, caused a great commotion in provincial legal circles. Placing a young man, only two years at the Bar, and not a resident of the province, over the heads of men who were well known, who for years had taken leading positions in the professional and public life of the province, would naturally cause surprise, disappointment and indignation. The following is the copy of the letter accompanying the resolutions forwarded to Judge Carter after his arrival:

The accompanying copy of resolutions passed at a meeting of the Bar of the Province is sent to Judge Carter, in pursuance of the wishes of the members present at the meeting, in order that Judge Carter may be put in possession of full information of the steps taken by the profession on the subject of his appointment to the Bench of the Supreme Court; but Judge Carter, of course, will understand that there is nothing intended as personal to himself. On the contrary

it is the desire of all the members of the Bar to show him every possible courtesy, attention and respect, which, as a gentleman and a stranger in the country, as well as his high official situation, entitle him to look for.

This communication is dated at Fredericton, October 28th, 1834. Judge Carter, on the following day, sent a letter to the Chairman, Attorney-General Peters, acknowledging the receipt of the resolutions, and stating that he did not consider the action of the Bar as in any way hostile to himself personally. He also stated: "I beg you, further, to inform the Bar, that whether it may please His Majesty to continue me in the situation to which he has thought fit to appoint me, or to adopt the suggestion contained in the resolutions, it will always be my most anxious wish and endeavor, as long as I hold my present situation, to cultivate and maintain that good feeling which, where it does exist, between a Judge and the Bar, most materially lightens the duties and labors of both."

To this letter the Attorney-General sent the following reply:

FREDERICTON, 31st October, 1834.

DEAR SIR:

I am to acknowledge the receipt of your letter of the 29th respecting the resolutions passed at a meeting of the Bar held at Fredericton during the sitting of the Court at the past Term, addressed to me as Chairman of that meeting, and shall deliver the same to the gentleman who acted as Secretary on that occasion. Allow me to add that I feel much gratified to learn from yourself that you do not consider anything therein contained as indicating any personal hostility to you, which I am certain was far, very far, from the intention of any one of the gentlemen there assembled. I would further add, as regards myself as chairman at that meeting, (a situation, which as Attorney-General I felt it a duty not to decline being placed in), that although I perfectly accorded in opinion with the meeting in the substantial parts of the resolutions, I felt compelled to express my dissent to that part of the sixth which relates personally to yourself, considering that whatever may be the determination of His Majesty's government or to the

policy to be pursued *in futuro*, it would be manifestly unjust as regards you, to make any alteration—which indeed the profession could not expect or even hardly desire, considering the great sacrifice made in having quitted your native land and made an entire change of residence. I therefore could not feel myself justified in placing my name to the petition proposed to be laid before His Majesty.

I have the honor to be,

Dear Sir,

Your most obedient servant,

CHARLES J. PETERS,

Attorney-General.

JUDGE CARTER.

The following sketch, from the pen of the late Hon. L. A. Wilmot, appeared in the press, February 25th, 1835:

JUDGE CARTER ON THE BENCH.

A SKETCH.

DUKE.—This letter from Bellaris doth commend a young and learned Doctor to our Courts. I beseech let his lack of years be no impediment to let him lack a reverend estimation, for I never knew so young a body with so old a head—*Merchant of Venice.*

I stepped into the Court the other day to look at His Honor Judge Carter on the Bench. I had both heard and seen something of His Honor previously, though not in his official capacity, and the impression thus created, together with a very natural motive of curiosity, founded principally upon the interest which his appointment had excited, led me to devote a few moments to the study of this gentleman's outward appearance (since my time allowed no more) in the light in which he should be viewed when under the limner's hand as a Judge. So short a space, however, could yield but little advantage, and some allowance therefore must be made for what can be at best but a very slight and imperfect delineation. I was ignorant of the cause in hand, but Judge Carter seemed to be trying it. No curious person in these matters could fail, on entering the Court, to be struck with the youthful appearance of the Judge. He would thence be led to examine him more closely, and could hardly, I think, leave the Court without a vivid conviction that His Honor fills his elevated seat with the dignity that becomes it. The countenance is peculiarly prepossessing, pale but very expressive, while

the head, though small, is beautifully shaped. It did not strike me that the forehead was remarkably high, I rather think not; yet is there no lack betraying a deficiency. His hair seemed to be dark auburn, slightly curled, and kept sufficiently short to present the fine outline of the grand consummation of nature. Of the eyes I can only say, from the brief observation I was taking, and the position in which I stood, that at one moment they appeared as if they would have sprung from their sockets to the writing which had probably elicited their fire. The Judge bent with their motion and read, but almost immediately reclined back again and relapsed into his former pensiveness. A slight twitch of the mouth occasionally seemed to denote more strongly the action going on within the mind. There was one gesture which I liked exceedingly. His Honor had been looking over a section of an Act, and had handed the book to Judge Botsford who presently passed it to Judge Parker. Till then the Counsel had paused in his address, but for some motive resumed as the latter Judge received the Act. The thoughtfulness of Judge Carter was, at the sound of the Counsel's voice, instantly disturbed; and a quick and peculiar turn of the head towards Judge Parker discovered his sense of the violation of that respectful deference which the Bench commands, and which the Counsel had, for the moment, inadvertently lost sight of, and of the etiquette that adorn the manners of society in general. The Counsel felt the gesture (no word was spoken) and recovered himself, and the Judge's face again resumed its former calmness. Once he spoke, but it was in an under key, whose silver sweetness and clear intonations made me long to stay; business, however, required me to leave the Court. I would not leave this subject without expressing a sincere hope that the favorable impression Judge Carter seems to have created may in due time be fully justified, and His Honor's reputation as a lawyer and judge firmly established, so that the little quotation at the head of this sketch may not have been put forth as without meaning, but that we may rather say still more emphatically—"O wise and upright Judge, how much older art thou than thy looks."

When Chief Justice Chipman retired, Judge Carter, January 8th, 1851, succeeded him as Chief Justice. He received the honor of Knighthood in 1859. This distinction, it has been stated, was given him "in acknowledgment of his long and faithful services;"

but there is also a suggestion that the primary moving cause was on account of his services in connection with the Ryland case, so called. The case itself was one which dragged along for years, and was continuously being pressed upon the Colonial Office, and brought to the notice of both branches of the British Parliament. Prior to the Union Act of 1840, Mr. Ryland was Clerk of the Executive Council of Lower Canada, and had been appointed by Lord Durham to that position. When Lord Sydenham, then Lord High Commissioner for Canada, in 1841, desired to effect administrative reforms on the union of Upper and Lower Canada, he requested Mr. Ryland to resign his office, on the understanding that he was to be appointed to another equally as lucrative. His office was what was known as a patent one, and at the time—if he had so desired—he might have retired on an allowance of £515 per annum. Mr. Ryland did resign his office, as he claimed under a guarantee from Lord Sydenham, and was given the Registrarship of the District of Quebec. Shortly after, the Canadian Legislature cut up the District of Quebec into several registries, and left Mr. Ryland with a restricted territory, from which the fees were very inconsiderable. His salary and emoluments of the office he resigned were equal to £1030 a year. In consequence of the legislature depriving him of his income, he claimed to be indemnified. The Canadian Legislature did not deny the justice of his claim, but insisted the demand was one for the British government to arrange. This unsettled dispute ran on for fourteen years, when, by a despatch from the Colonial Office, Chief Justice Carter was appointed to look into and report upon the claim. He did so, and recommended paying Mr. Ryland £9,000 currency. One-half of this sum was paid by the British government, and, after considerable delay, the other half by the govern-

ment of Canada. The Chief Justice received no remuneration for his services, but declined to accept even his expenses to Montreal while acting as commissioner. In a despatch of November 6th, 1856, from H. Labouchere to Lieutenant-Governor Manners-Sutton, the thanks of Her Majesty's government were tendered to the Chief Justice "for the prompt and efficient manner in which he has executed the duties imposed on him." And in a further communication of January 23rd, 1857, the Lieutenant-Governor says: "I feel much satisfaction in informing you that I have received instructions from the Secretary of State to express to you his sense of the motives by which you were actuated in undertaking the inquiry into Mr. Ryland's demand, and of the liberal spirit you have evinced in declining to receive any remuneration for your services on that occasion." After Mr. Ryland had received the £9,000, he again, July 5th, 1859, brought his claim before the British Parliament but it does not concern the life of Sir James Carter after he had made his report. The knighthood, as already stated, was given in 1859, and was the first to be given in New Brunswick. His letter of resignation was dated June 26th, 1865, and the resignation took effect the first day of September of that year. The first of the Bench in British North America to receive knighthood was the Hon. William Campbell, who was with Cornwallis at Yorktown in 1781. After the peace he went to Nova Scotia, and after nineteen years of the practise of law became Attorney-General of Cape Breton. In 1811 he was appointed a Judge in Upper Canada, and in 1825 became Chief Justice; and on his retirement, in 1829, received the honor of knighthood. Sir James Carter returned to England in 1866. An appreciative sketch of his life was printed in an English newspaper at the time of his death. It was so true of the Chief

Justice that a portion of it is here transcribed. It says: "He was at once an estimable and loveable man. Of the higher qualities of his mind it may be said that his knowledge was extensive, varied and accurate; his judgment was clear and sound. He was in all respects a reliable man; a man of sterling honor and integrity. Of a most catholic spirit—of a gentle and pleasant temperament—he was kind, genial and courteous to all who came within the sphere of his influence. While his health and strength remained his social qualities were eminently attractive, and his varied acquirements and accomplishments made him an honored and favorite guest. His knowledge of music was considerable. He possessed a fine tenor voice, and rarely has a voice so sweet, so mellow and so charming been heard in private. He was witty, too, as well as wise; and his keen sense of the comical, added to the sweetness of his temper, his playfulness and pleasantry of manner, and his thorough relish of all that was bright and happy in life, rendered him a delightful companion, especially to congenial spirits."

The writer, as a student-at-law, remembers Sir James Carter presiding as a judge. When presiding at Court or at *nisi prius* he was distinguished by an easy and graceful manner, and was exceedingly courteous towards counsel and witnesses. He never lost his temper or became irritated, as judges, at times, no doubt, have ample occasion to be. He was quick at catching the point of an argument, and his rulings were fair, firm and prompt. As a result of these qualities he was popular with the Bar and general public. His charges to juries and his judgments in Court were always marked by clearness of expression and logical arrangement. For many of the facts stated in this note I am indebted to the courtesy of Col. J. Colebrooke Carter, of England, a son of the

Chief Justice. Many letters and papers otherwise inaccessible were freely by him put in my hands for perusal, and such use as I might deem desirable, for which I desire to return my best thanks. The introduction of responsible government into New Brunswick has now rendered impossible the appointment of a Judge to our Supreme Court by the influence of Downing Street.

CHAPTER XIV.

HON. ROBERT PARKER.

When the American revolution commenced, the father of Robert Parker was in the Boston Custom House, and at the evacuation of that city by the British went to New York, where he remained till the close of the war. In 1784 he was in London, and was appointed comptroller of customs at St. John, New Brunswick, with the office of ordnance store keeper, both lucrative offices, the salaries of which were paid by the Crown. In 1789 Mr. Parker visited the United States, and was present in New York at the inauguration of Washington as President. Three years later he was in London, as appears from the following letter :

MY DEAR CHIPMAN :

LONDON, 16 February, 1792.

Soon after receiving your letter I purchased a ticket on our joint account for which I paid eighteen pounds. The lottery will begin drawing in a few days, and, when the fate of our number, which is 15,909, is determined, you shall be apprised of it. I was disappointed at not seeing ~~our~~ friend John Coffin on the arrival of Thompson and Reed's ship. I have got my leave of absence extended till September, and am now setting out for Bath. I frequently meet some of our friends of the 54th regiment, and mean to pass some time with them after my return from Bath. I saw Mrs. Arnold and the General, they have taken a very good house in Hollis Street and live in state. I am glad to hear ship-building goes on with you. Make my affectionate remembrance to Mrs. Chipman and believe me, my dear Chipman,

Your very sincere friend,

WARD CHIPMAN, ESQUIRE.

ROBERT PARKER.

The following letter from General Benedict Arnold to Ward Chipman explains why the leave of absence was extended to Mr. Parker :

MY DEAR SIR :

LONDON, 30th August, 1793.

I intended writing you by our friend Parker, but his at-

tention was so taken up with the ladies when in Devonshire that he did not let any one know when or where he embarked. I hear he is married to a very pretty and agreeable lady, and that he embarked with her in the August packet for Halifax. You will probably have the pleasure of seeing them before this reaches you.

Yours,

WARD CHIPMAN, ESQUIRE.

BENEDICT ARNOLD.

The residence of Mr. Parker was on Prince William Street, St. John, opposite the present Custom House. He lived there till his death in 1823, aged 74 years, retaining his offices till the close of his life. His widow died in the same house, 1852, aged 83 years. Robert, the eldest son, was born in 1796. At the opening of the grammar school in St. John, 1807, he, with his brother Neville, became a pupil. In 1811 he matriculated at King's College, Windsor, N. S., graduating B. A. in 1814. He was the first law student in the office of Ward Chipman, Jr. Michael Hailes, of Fredericton, was his contemporary as a student, and both were admitted attorneys in 1817. In 1820 the following gentlemen were members of the New Brunswick Bar: Fredericton—Thomas Wetmore, S. Denny Street, William F. Odell, George L. Wetmore, Michael C. Hailes (1), George F. Street, Henry Bliss, George P. Bliss; St. John—Charles J. Peters, Ward Chipman, Edward J. Jarvis, William Tyng Peters, Robert Parker, John Thomas Murray, William B. Kinnear; St. Andrews—Harris Hatch, Henry Swymmer, Neville Parker; Miramichi—Thomas H. Peters, John Ambrose Street; Westmorland—William Botsford, J. S. Morse.

The following is the marriage notice of Judge Parker:

Married, January 22, 1820, at Trinity Church, St. John, by Rev. Robert Willis, Rector, Robert Parker, Jr., Esquire, eldest son of Robert Parker, Esquire, (2) Comptroller of Customs of this port, to Susan, third daughter of the late Col. Morris Robinson, Assistant Barrack-Master-General at Gibraltar, brother of the Hon. John Robinson, Mayor of St. John.

The first meeting of the stockholders of the Bank of New Brunswick was held at the Coffee House, St. John, June 12th, 1820, and the following gentlemen were elected directors: Henry Gilbert, John Robinson, Nehemiah Merritt, William Black, Ezekiel Barlow, Thomas Millidge, Ward Chipman, Jun., Zalmon Wheeler, Hugh Johnston, Jun., Robert W. Crookshank, Robert Parker, Jun., Stephen Wiggins, Sr. At the first meeting of directors held thereafter, the Honorable John Robinson was elected President and Robert Parker, Solicitor.

At the time that Edward J. Jarvis, Recorder of the City of St. John, removed from the Province in 1824, the government appointed Robert Parker to the office, which he held till 1830, when he resigned. On the elevation, in 1824, of Ward Chipman, one of the members of the County of St. John, to the Bench, Robert Parker was elected by acclamation to the vacant seat, and to the end of the life of that House, in 1827, he was the only member of the Bar in the Assembly. At the general election in 1827, the following gentlemen were candidates for the City and County of St. John: John R. Partelow, Charles Simonds, John Ward, Jun., Robert Parker and Stephen Humbert. The first four were elected. Polling for elections then extended over a period of fifteen days; there was open voting, and it was known from day to day what was the state of the poll; and, as a result, excitement ran high, and there were frequent riots. The Bar in the new House was increased by the election of Edward B. Chandler from Westmorland and John W. Weldon from Kent. John R. Partelow also took his seat for the first time. A dispute arose between the Legislative Council and the House of Assembly, the Master in Chancery appointed to carry down messages from the Legislative Council to the House of Assembly having reported to the Council

that the Speaker received the said messages standing, but covered, the Council passed the following resolution:

Resolved, That as it appears to be the usage of Parliament after the Messenger has made him three congés for the Speaker to rise uncovered to receive the message; and as this has always been the invariable practice since the existence of the Legislature in this Province, and as the House have not communicated to the Council any notice of this alteration, the Council do therefore think proper to inform the House that they consider themselves as entitled to receive, in future, from the House this long established accustomed mark of courtesy and respect. *Ordered*, that Mr. Bliss, one of the Members of Council, do communicate this resolution to the House of Assembly.

Apparently the difficulty was accommodated satisfactorily to all parties, for, on motion of Mr. Parker, it was, by the House of Assembly,

Resolved, that when a message is received from His Majesty's Council, if the Messenger has made his three congés, the Speaker do rise uncovered to receive the message, according to the usage of Parliament on such occasion.

The Jubilee year, or fiftieth anniversary, of the landing of the Loyalists, was celebrated at St. John, May 18th, 1833, by a banquet, to which the old Loyalists scattered throughout the Province were invited. The chair was occupied by John M. Wilmot, Mayor of the city, with the Lieutenant-Governor, Sir Archibald Campbell, on his right, and the venerable father of the city, John Ward, on his left. The chief speakers on the occasion were Judge Bliss, Judge Chipman, Attorney-General Peters and Robert Parker, Solicitor-General. A letter was read from Chief Justice Saunders, regretting that from age he could not be present. To the toast, "To His Honor, the Chief Justice, their Honors the Judges of the Supreme Court, and the gentlemen of the Bar, may they ever maintain and support the principles of justice and honor." Solicitor-General Parker responded as follows:

Mr. Mayor, As a descendant of a Loyalist, and a Member of the legal profession, I trust I may be excused in making a few remarks while returning thanks for the honor done to the Bar of New Brunswick. Never on any occasion have I felt more proud of my connection with this City, than the present, and much did I rejoice when I heard at a distance the determination of the Corporation that the fiftieth anniversary of the landing of the Loyalists on these shores was to be celebrated in a manner becoming to an event so highly interesting to the survivors and descendants of that faithful band. Sir, when we remember with what ceremonials and solemnities the citizens of the United States hailed the Jubilee day of their independence, we should have been deficient in proper feeling, had we suffered this day to pass unnoticed here, unless, indeed, after half a century's reflection, we are ashamed of the principles of our fathers in that memorable period; but sir, this is not the case; we still glory in their loyalty on that occasion in despite of the scornful jests of radicals and demagogues, and the cold blooded speculations of disaffected theorists. We stand forth to avow that we do not hold our allegiance so light a thing that it may be thrown aside or exchanged as a cloak when we are tired of the cut or the color of it. Sir, we have no reason to regret this sentiment. Fifty years have passed, and the place where we now assemble has changed from a desolate wilderness to a flourishing city. We live in a country where, under the dominion of the British Crown, equal laws are regularly and impartially administered to the poor and the rich; where the spirit of the British constitution pervading our government and institutions, insures protection to every man's person and property. The celebration of this day will stand as a memorial that we take the same side as our fathers have taken, that we adopt their opinions, we approve their principles; and, sir, it is a pledge, if need be, we are ready to imitate their example.

The following were students in the office of Robert Parker: John M. Robinson (3), William Merritt, Robert L. Hazen and Richard Sands.

When Chief Justice Saunders died, the expectation of the Bar was that Solicitor-General Parker would succeed to the attorney-generalship or a judgeship, and that feeling was shared by the Lieutenant-Gover-

nor, as appears from the following letter to the Colonial Secretary :

FREDERICTON, 31st August, 1834.

SIR :

Since I had the honor of addressing you on the 27th instant respecting the death of Judge Bliss, I have heard it stated on the authority of a private letter from London that Judge Chipman has been, or is to be, appointed Chief Justice of this Province. Should this be the case, and that Mr. Solicitor-General Parker has been appointed to succeed him as puisne judge, I now beg leave to recommend Mr. John Simcoe Saunders for the puisne judgeship in the place of Mr. Bliss. I think it proper to add that Mr. Street, His Majesty's Advocate-General, whom I formerly recommended to succeed Mr. Parker, prefers for the present one of His Majesty's law offices, which will account for my not recommending him for the vacant seat on the Bench according to seniority.

I have, etc.,

ARCHIBALD CAMPBELL.

T. SPRING-RICE.

Colonial Secretary.

The following is the reply from the Colonial Secretary :

The Secretary of State has had before him the claims for promotion forwarded by the Lieutenant-Governor from several members of the Bar, who are anxious to be considered in the arrangements consequent upon the death of Judge Bliss; requests him to inform Mr. Peters (4) that he has not offered him the vacant seat on the Bench only because from the terms of his application for the Chief Justiceship, he saw no probability of his acceptance of it. Had any such existed, he would not have lost the opportunity of securing, in a judicial capacity, those services which have been zealously and efficiently rendered by him as Attorney-General. The testimony which has been rendered of Mr. Parker's character, talents and services, is such as to induce him to place him on the Bench and to express his belief that he is eminently qualified to discharge the functions. In selecting a successor for the office of Solicitor-General, he has attentively weighed the claims and qualifications of Mr. Street, Mr. Saunders and Mr. Chandler, and has determined on promoting the first of these gentlemen to the office of Solicitor-General,

and to direct that Mr. Saunders should succeed to that of Advocate-General, and to acquaint Mr. Chandler that, although the Secretary of State has not been able to promote him on the present occasion, he by no means underrates his ability or competency to undertake official duties, and it will be gratifying for him to find hereafter that it is in his power to testify his favourable opinion.

The patronage that fell to T. Spring-Rice during the one hundred and sixty-one days of the Melbourne government was phenomenal—a Chief Justice, two puisne judges, with the Solicitor and Advocate-General. But for the appointment of Judge Carter to a seat on the Bench, the judgeship of Ward Chipman would have gone to Solicitor-General Parker, and the seat on the Bench rendered vacant by the death of John Murray Bliss to John Simcoe Saunders.

The jubilee year of the organization of the Supreme Court was in 1834. At that time the leading officials of the Province were as follows: Lieutenant-Governor and Commander-in-Chief, Major-General Sir Archibald Campbell; Executive Council, Hon. Thomas Baillie, Frederick P. Robinson, William F. Odell, George Frederick Street, John Simcoe Saunders; Legislative Council, the Bishop of Nova Scotia, Hon. William Black, George Shore, Thomas Baillie (5), Harry Peters, Frederick P. Robinson, Richard Simonds, Joseph Cunard, William H. Robinson, John S. Saunders, James Allenshaw, Amos E. Botsford.

Officers of Government: Attorney-General, Charles J. Peters; Solicitor-General, George F. Street; Advocate-General, John S. Saunders; Provincial Secretary, William F. Odell; Commissioner of Crown Lands, Thomas Baillie; Receiver-General, George Pidgeon Bliss; Chief Justice, Ward Chipman; Puisne Judges, William Botsford, James Carter, Robert Parker; Clerk of the Crown, Charles S. Putnam; Clerk of the Pleas, George Shore; Clerk of the Crown and Crown on the Circuits, William Tyng Peters.

In the *Royal Gazette*, December 31, 1834, was the following notice: His Majesty has been pleased to confirm the Honorable Robert Parker to be a Justice of the Supreme Court. At a term of the Court, St. John, 1835, Judge Parker presided. Before the close of the Court, the grand and petit jurors presented addresses. The following is the address of the grand jury:

May it Please Your Honor:

We, the Grand Jury for the City and County of St. John, beg leave to congratulate Your Honor upon your appointment to be one of the Justices of the High Court of Judicature of this Province. While in common with our fellow citizens we deplore the demise of your lamented predecessor, to whose uprightness as a Judge and independence as a man the community at large proudly bear witness, we are gratified and cheered by the parental care evinced by our most gracious Sovereign, in selecting from the Bar of our Province, a gentleman of your known integrity and high legal attainments to fill so honorable and responsible an office. We are well assured from your past exertions in the cause of philanthropy, that the future will add many flowers to the chaplet already accorded you by a discerning people, and we contemplate with pleasure the career of usefulness now opened up before you, satisfied that your high station will only be an additional incentive to emulate the highest fame of either of your predecessors or coadjutors.

That impartiality and mercy in the execution of your judicial functions may ever be paramount in all your decisions, that you may ever prove to be a terror to the evil doer and an encourager and rewarder of those who do well, and that the Supreme Judge of the Universe may bless you with many years of happiness, both in public and private, are the sincere aspirations of your Honor's most devoted humble servants.

FRANCIS LEAVITT,

Foreman.

ST JOHN, 17 January, 1835.

To this address Judge Parker made the following reply:

I thank you most sincerely for the congratulations so kindly offered me on my appointment to the Bench of the Supreme Court. They are, I need hardly say, particularly gratifying as

received in the place of my birth, where my whole professional career has been passed, and from a large and notable body of my fellow citizens who have known me for some time, and several of you from earliest childhood. The example of my esteemed and most justly venerated predecessor, and of those gentlemen with whom I have the honor to be associated, will, I trust, always have a proper effect on my conduct. It shall, gentlemen, be my increasing endeavor with the blessing of God, to discharge faithfully and fearlessly the duties attached to my situation, of the importance and responsibility of which I am most deeply sensible. It will also be highly gratifying to me to merit a continuance of your good opinion by making my life in every suitable respect beneficial to this County and Province.

The following letter shows how scrupulous Judge Parker was in discharging obligations although not legally against himself:

MY DEAR HAZEN :

I enclose you a check for fifty guineas, which I presume is the amount of your fee for my nephew, Frederick Duvernet, I believe that is usually paid.

Yours truly,

R. PARKER.

R. F. HAZEN, ESQ.

At the session of the legislature of 1836 a committee of the House of Assembly recommended the appointment of a Master of the Rolls. For the office Sir Archibald Campbell recommended John Simcoe Saunders. The Colonial Secretary was willing to appoint him, but required an Act creating the office and making provision for the office. An Act passed in 1838 in which the appointment was to be in the Governor-in-Council. The following letter from the Lieutenant-Governor, Sir John Harvey, refers to this office:

FREDERICTON, N. B., 16 March, 1838.

MY LORD:

The General Assembly of this Province, having passed an Act making provision for the office of Master of Rolls, I have the honor to report to your Lordship that I have selected the

Honorable Neville Parker, senior Master of the Court of Chancery, and a gentleman of the highest character and professional attainments, to fill that important office, and I will add, that I have reason to believe that the selection of this distinguished individual for this office, has diffused the highest degree of satisfaction throughout the Province. With reference to the rank and precedence which should be assigned to the office of Master of Rolls, as that is a question which it will now be necessary to determine, I am induced to submit, as well with regard to that office, as with reference to the suggestion which I took the liberty of offering in my dispatch of 7th of December last, relative to the puisne judges, how far the difficulty of assigning to them such rank as may clearly indicate the place which it is intended that they should hold in society, may not be met by conferring upon all Judges upon their appointment, the honorary rank of Executive-Councillors, solely for the purpose of giving them a definite rank, and without any idea of calling them to take their seats at that Board. With respect to the Master of the Rolls, looking to the corresponding situation in England and Ireland, I take for granted, that as the Lord Chancellor takes precedence of the Lord Chief Justice of the Queen's Bench, and as the Master of Rolls precedes all the other Chiefs and other Judges, so the Master of Rolls in the colonies will, I conclude, naturally take rank after the Chief Justice. This rank I shall assign him accordingly, until I am honored with the signification of Her Majesty's commands on the subject. I have the honor to enclose a copy of the commission which I have given the Master of the Rolls.

I have, etc.,

J. HARVEY,
Lieut.-Governor.

LORD GLENELG,
Col.-Secretary.

P. S.—Your Lordship will perceive from the enclosure No. 3, Mr. Parker has placed in my hands his resignation of his seat in the Executive Council.—J. H.

The Colonial Secretary would not confirm the appointment, nor approve of the Act vesting the appointment in the Governor-in-Council. At the next session the Act was amended, vesting the appointment in the Crown, followed by the appointment of Neville Parker as Master of the Rolls. The Court of Chancery was

then constituted as follows: Chancellor, the Lieut.-Governor; Master of the Rolls, Hon. Neville Parker; Clerk of the Crown in Chancery, Hon. William F. Odell; Registrar, Daniel Ludlow Robinson; Masters, Hon. George F. Street, G. F. S. Berton, Henry Swymmer, Stephen Miller, George J. Dibblee; Sergeant-at-Arms, William McBeath. At a special Court of Oyer and Terminer and general gaol delivery held at Kingston, King's County, September 17, 1839, at which Judge Parker presided, a case of great importance at that time came before the Court. Terrence Leonard, James McMonagle, Patrick Haley and John Coyle were placed on trial charged with the murder of Bernard Coyle at the house of Terrence Ferguson, eight miles from St. John, on the road leading to Gondola Point. On the morning of July 30th of that year the prisoners, with their wives, left the city in wagons for a day's pleasure in the country. Having drunk freely of liquor they became quarrelsome, insulting several parties on the road, and they finally entered the house of Mr. Ferguson, where, being refused liquor, they became quarrelsome, and on Bernard Coyle, an old man in Mr. Ferguson's employ, interfering, he was attacked by them and beaten to death. The prisoners were defended by Robert L. Hazen (6), A verdict of guilty was rendered against Leonard, McMonagle and Haley; Coyle was acquitted. The Judge sentenced the prisoners convicted to be executed on the sixteenth day of October then next. A great effort was made to have the sentence changed to transportation for life, but it was unsuccessful. Leonard was tried first, the other three were tried jointly. On the trial of McMonagle, Haley and Coyle, the wife of Leonard was tendered as a witness on the part of the prisoners, Haley and Coyle, but the admissibility of her evidence was objected to on the part of the Crown, and also on the part of McMonagle; and

the Judge, being of opinion that she was incompetent as a witness, rejected her testimony, reserving the question for the consideration of the full Court. The case went on appeal to the full Court, and, after argument and consideration, the ruling of the trial Judge was sustained. The Judge then recommended that sentence against Haley be respited until the Royal pleasure was known thereon. The sentence against Leonard and McMonagle was carried into effect on October 16th, 1839. The cases created a great deal of feeling and excitement; and to avoid trouble, as a precaution, in consequence of the insecure state of the gaol, Capt. O'Halloran's Company of the 69th Regiment was sent to Kingston. An appeal on behalf of Haley, with a recommendation of the Judge, full notes of the trial, and the argument of R. L. Hazen, prisoner's counsel, were transmitted by the Governor, to be laid by the Secretary of State for the Colonies before the law officers of the Crown. They decided "that after Leonard's conviction his wife's testimony should have been received as a witness for Haley, as her testimony would not then affect her husband, who was already tried, although not sentenced; and according to the merciful course pursued in such cases they ordered the grant of a pardon." which was granted.

Judge Parker through life took an active and intelligent interest in all philanthropic and religious interests in the Province. When John M. Wilmot (7), in 1839, retired from the office of President of the Bible Society, Judge Parker was appointed to the position. At the first meeting thereafter, on taking the chair, he spoke as follows:

Ladies and gentlemen: Although public meetings have lately become more frequent than formerly, I believe that there are none looked forward to with greater pleasure, attended with more satisfaction, or which leave more gratifying reflections behind them, than the anniversary meetings of the New Brunswick Auxiliary Bible Society. You will have noticed

one change since our last meeting; the highly respected gentleman, John M. Wilmot, who has for so many years occupied the place, as President of this Society, and who brought to the discharge of its duties a lively zeal, hearty good feeling, and kindly courtesy, and took so much delight in contemplating from year to year the increasing prosperity of our Association, has felt it his duty to retire; but in mentioning the loss we have sustained, it is gratifying to think that it has not been caused by any decay of body or mental vigor, or diminishing zeal in the cause of the Bible, and that in the place he has removed to there will be a new field open to his exertion, which will lead us to hope soon to hail at least one New Branch Society from the County of Sunbury.

In 1841 John Ambrose Street, Clerk of the Crown, raised the enquiry, as to whether it was his duty to conduct prosecutions as counsel for the Crown on indictments found at the Court of Oyer and Terminer and general gaol delivery for the County of York, or whether that duty devolved on Her Majesty's Attorney-General? The latter official held it was the duty of the Clerk of the Crown.

The Lieutenant-Governor submitted the question to the judges. Their report is of great historic value, and has found a place in the journals of the House of Assembly for 1842. Prior to 1836 all trials, whether criminal or civil cases, in the County of York, took place at the Bar of the Court in Fredericton; and in all cases in other counties the trials took place under sommissions of Oyer and Terminer and general gaol delivery. On January 1st, 1836, this was changed by the Act of Assembly, 5 William IV, Chapter 37, which provided for the holding of sittings before or after term before the Chief Justice or one of the other judges. The effect of this Act has been to transfer all trials from the terms of the Supreme Court to the *nisi prius* sittings in the different counties. The Clerk of the Crown in the Supreme Court was made the Clerk of the Crown, and also Clerk of the *nisi prius* sittings, and declared to be subject to the duties and

entitled to the rights, privileges and emoluments of those offices. In regard to the Circuit Courts, immediately after the erection of the Province, an office was created, or to speak more correctly, two offices under the same patent, namely, the Clerk of the Circuits or Clerk of *nisi prius* sittings for civil matters, and Clerk of the Crown on the Circuits for criminal matters. By reference to the minutes of the Supreme Court, it appears to have been the constant practice from the organization of the Province for the Attorney-General to conduct criminal prosecutions at the terms of the Supreme Court, and to perform the duties of solicitor as well as counsel in such prosecutions; but these duties, prior to the appointment of Mr. Wetmore as Attorney-General in 1809, were performed by the Clerk of the Crown on the Circuits, Mr. Chipman, or his deputy. He received an annual grant of £50 from the government contingent fund expressly for his services as Clerk of the Crown. Mr. Chipman was also Solicitor-General. On Mr. Wetmore's appointment as Attorney-General, he being in large practice and attending the Circuits, he took upon himself the whole conduct of the criminal prosecutions, both as solicitor and counsel, and went so far as to question the right of the Clerk of the Crown on the Circuits to act as counsel or even to frame indictments. In consequence of that officer conducting the criminal business at a Court held without notice to the Attorney-General, he, in the year 1814, presented a memorial on the subject to the President of the Province, which, with the reply of the Clerk of the Crown on the Circuits, Ward Chipman, Jr., was referred to the judges and a report made thereon. In this report the judges state that it is the duty of the Attorney-General to attend only at the terms of the Supreme Court at Fredericton; that the Crown may retain any barrister to conduct criminal business in any Court; that the Clerk of the Crown

on the Circuit, being a barrister had the right to be heard in any Court, and he must be considered as retained by the government to conduct the criminal business at the Circuit Courts by the receipt of the stipend before mentioned. At the same time they acknowledged the right of the Attorney-General to take upon himself the conduct of any criminal prosecution whenever he may think fit to do so. Mr. Wetmore discharged the duties as prosecuting officer at most of the Circuit Courts, as well as in the Supreme Court, although in his absence the duties were performed by the Clerk of the Crown on the Circuits. The Judges further said:

We do not consider the Clerk of the Crown either in the Supreme Court, or on the Circuits, bound by virtue of his office to act as Counsel for the Crown on the trial of indictments, whatever may have been the extent to which either of these officers may have heretofore performed their duty from the circumstances of their being practicing Barristers in the regular employ of government, or volunteering the duty from a feeling of the necessity of their so doing; and we think it much more fitting with the orderly administration of justice, that those officers should be confined to their appropriate clerical duties. In the first place we are of opinion that the Clerk of the Crown, as well at the sittings for the County of York, as at the Circuit Courts should be confined to the appropriate duties of his office without being required to discharge any of the duties which properly belong to the office of the Crown Solicitor, or Counsel. In the next place we are of opinion that the Attorney-General and Solicitor-General are not bound in the ordinary exercise of their duties to attend any of the said courts. The Governor may of course order them to attend and conduct prosecutions on any occasion when he may think it expedient, but when it is once settled that this is not the ordinary course of duty, they would naturally expect to be specially paid for such duty.

WARD CHIPMAN,
WILLIAM BOTSFORD,
J. CARTER,
ROBERT PARKER.

In 1846 Judge Parker obtained leave of absence for one year to visit England (9) in consequence of impaired health. Mrs. Parker accompanied him. The change proved beneficial, as on his return he was greatly invigorated in health. In the summer of 1851, Attorney-General Street introduced and carried a measure through the legislature for the appointment of a law commission, of which the following is the preamble: "*Whereas*, it would greatly facilitate the administration of justice in this Province and reduce the expense thereof if the Acts of Assembly were revised and properly arranged, and the proceedings in suits of law and equity abridged and simplified." The government appointed the Hon. William B. Kinnear chairman, with James W. Chandler and Charles Fisher commissioners to perform the work. The secretary of the commission was William H. Needham. The commissioners, in their report, state: "We think the practice of the law must, for the future, be founded more on the principle of common sense than on ancient precedent; that it is time to abolish a system by which fictions seem too often to have been considered unavoidable, in order that truth and justice might be reached." Among the more important changes recommended and adopted were permitting parties to give evidence in their own behalf in civil actions, reducing the number of petit jurymen in civil causes from twelve to seven, five being able to render a verdict after being out a certain time, jurors to be allowed meat drink and warmth when deliberating on their verdict. Among other changes was the transfer of the Court of Chancery back to the Supreme Court, and this, notwithstanding it was not looked on favorably by either the Master of the Rolls or the judges of the Supreme Court. Over two years were occupied by the commissioners, the work devolving largely on the chairman and secretary. After the necessary legislation

adopting the work of the commission, the law, as revised, was published in three volumes (10). The Master of the Rolls, on taking his seat on the Bench, claimed rank and precedence next after the Chief Justice, on the ground that the office he vacated was higher than a puisne judgeship. After correspondence with the Imperial authorities, the Queen appointed the Master of the Rolls, Neville Parker, to be a Judge of the Supreme Court, with rank next after the Chief Justice. Until 1854 the Circuit Courts were opened by commission, requiring two or more magistrates to be present with the Judge. In imposing sentence, the magistrates of the county in which the trial was held had a voice with the Judge. At a trial at the St. John Circuit in 1853, Judge Parker presiding, on a question as to the length of imprisonment to be awarded, the Judge was overruled by the magistrates. To prevent a recurrence of what had thus taken place, possibly for the first time, the judges at the next session of the legislature secured the passing of the following Act: "There shall be sittings for the County of York and Circuit Courts for every county in the Province, at which a Justice of the Supreme Court shall preside, and where issues joined in the Supreme Court shall be tried, and also where all manner of crimes and offences shall be heard, enquired into, and tried, determined and punished without any commission. From and after the passing of this Act, 'An Act to regulate the Circuit Courts and Courts of Oyer and Terminer;" the presence of magistrates was no longer required to give validity to the proceedings of the Court, and in the proceedings they no longer had a voice.

The following letter from the administrator of the government to the Colonial Secretary relates to the elevation of Judge Parker to be the Chief Justice:

SIR:

GOVERNMENT HOUSE, Sept. 21, 1865.

I have the honor to inform you that consequent on the resignation of Chief Justice Sir James Carter, on the recom-

mentation of my Executix Council I have made the following appointments, Mr. Justice Parker to be Chief Justice, Hon. John C. Allen, Attorney-General, to be a Judge of the Supreme Court, Hon Albert J. Smith (11) President of the Executive Council, to be Attorney-General.

I have, etc.,

J. COLE.

RIGHT HON. EDW. CARDWELL,
Secretary for the Colonies.

When the resignation of Sir James Carter as Chief Justice took place, the feeling was universal that Judge Parker should succeed to the position. The office, on his part, was not only unsought, but its acceptance was pressed on him by the government. He took his seat on the Bench at Fredericton as Chief Justice, the first and last time, in Michaelmas Term, 1865. His appointment gave great satisfaction to the profession. At a meeting of the Barristers' Society held at Fredericton, October 14, 1865, the Society presented to the new Chief Justice the following address:

To the Hon. Robert Parker:

The members of the Barrister's Society of New Brunswick beg leave to offer your Honor their sincere congratulations upon your Honor's appointment as Chief Justice of the Supreme Court of New Brunswick. They feel that in placing at the head of the Judiciary a gentleman, who has by his integrity and ability in the performance of his duties as a puisne judge during the last thirty-one years, contributed so much towards the well deserved reputation of the Bench of this Province Her Majesty has paid a great compliment to yourself and conferred a substantial benefit upon the people of New Brunswick. They trust that in the dignified position in which you are placed, the remainder of a life devoted to the service of your country may be spent in comparative ease and comfort. They pray that that life may long be spared for the discharge of your duties in health and happiness.

J. H. GRAY, Q. C.,
Chairman.

GEORGE J. BLISS,
Sec. Bar. Society.

The following is Judge Parker's reply :

Gentlemen of the Barristers' Society :

I thank you for the congratulations you have so kindly offered me on my appointment to the Chief Justiceship of this Province, an office high and responsible which I have on no occasion directly or indirectly sought for myself, and which at this time I would willingly have declined, not because I am insensible of the honor and credit which attended it, not because I do not deeply feel the expression of confidence and goodwill of the public among whom I have so many years labored, but because at my advanced age I greatly distrust my ability to discharge the duties satisfactorily, and can look forward to but a very brief period for their continuance even in my best estate.

Your address Gentlemen, has a peculiar value, because, as a body, the Bar are the most able, perhaps alone able, properly to appreciate the service of the Bench, and never indisposed, I believe, on reflection to make allowances for the failure and defects, which must not unfrequently attend the best efforts of the most conscientious and painstaking Judges.

I Gentlemen, have lived to witness not only the great increase in your members, but the growing influence which you now exercise in the affairs of the Province, compared to that of forty years ago, when I first entered the Assembly, as the only lawyer in that popular body. Under any circumstances, thirty-one years, the time which I have passed since my first appointment to the Bench is a long judicial life. You know that in my case the labours have never been light; and of late, with the growth of the country, have become more and more arduous; but they have been attended with this happy alleviation that the utmost harmony and mutual confidence have generally prevailed among the judges, to which the high character and eminent qualities of no one have more conduced than those of my immediate predecessor, Sir James Carter, who, after a service contemporaneous with my own, has retired in the full enjoyment of the respect and regard of his brother judges, of you, gentlemen of the Bar, and of the whole community; and to whom, I sincerely trust, Providence may yet vouchsafe many years of health and comfort, and not unmerited nor unsuccessful leisure. Permit me, as a last word to say, gentlemen, that I trust we may be all guided by a desire to maintain unimpaired the good feeling and confidence which it is so essential to the due administration of justice in British courts should exist between the Judge and the

Bar, and which the controversies and conflicts, sometimes unavoidable, ought not to be allowed to disturb. Let us always bear in mind the account we are hereafter to give of the talents committed to us, not for our own benefit, but for the welfare of others, and seek for light and wisdom to that only source from whom all our blessings flow.

ROBERT PARKER.

The following poetic effusion expresses the character and life of the Chief Justice :

Who, if he rise to station of command,
Rises by open means, and there will stand,
On honorable terms, or else retire,
And in himself possess his own desire;
Who comprehends his trust, and to the same,
Keeps faithful with a singleness of aim;
And therefore does not stoop nor lie in wait,
For wealth, or honors, or for worldly state;
Whom they must follow, or whose lead must face,
Like showers of manna, if they come at all.

Before the elevation of Chief Justice Parker to the Bench, his character had been firmly established as a lawyer distinguished by qualities which made him deservedly eminent in the profession, by extensive and sound learning, by unimpeachable integrity of conduct, by the faithful and conscientious discharge of the duties devolving upon him as a citizen, as well as by the unostentatious manifestation of all the virtues looked for in a Christian gentleman. His appointment to the Bench was in accordance with the general desire that all vacancies should be filled by barristers chosen from those practising in New Brunswick. During all the thirty-one years he sat upon the Bench he held the highest place in the esteem of the profession and the country. As a Judge his bearing towards the counsel engaged in a cause and towards witnesses was marked by uniform courtesy and dignity, and his rulings at *nisi prius*, and his judgments delivered at the sittings of the Supreme Court, bore the stamp

of profound learning, while his scholarship imparted a high degree of finish to whatever he wrote. He may justly be regarded as the ideal judge and accomplished gentleman. He died November 24, 1865, as appears from Governor Gordon's despatch to the Colonial Secretary:

ST. JOHN, N. B., November 28, 1865.

SIR,—

1. It is with deep regret I have to report the death on Friday last, the 24th instant, of the Honorable Robert Parker, Chief Justice of the Supreme Court of this Province.

2. Mr. Parker received his first appointment as a Judge of the Supreme Court about thirty-one years ago, at the same time as Chief Justice Carter, whom he succeeded on Sir James's retirement from the Bench only two months since.

3. The judicial Bench in this Province has, up to this time, been composed of men who, in ability, learning and character, have in a remarkable degree surpassed the average mark; but of these Chief Justice Parker was a jurist undoubtedly the first, and his decisions are quoted as authority, not only throughout the British Provinces, but in the courts of the United States. Whilst his eminence as a lawyer called forth universal respect, the benevolence and simplicity of his character won for him an affection as general, and in a country where reverence for age or for authority are not general. I am confident that no man could be more revered or will be more truly mourned by thousands than the aged Judge, whose laborious life has now terminated, and than whom few can, with more confidence, have passed from a judgment seat on earth to appear before the Judge of all men.

ARTHUR H. GORDON.

HON. EDW. CARDWELL.

The members of the legal profession met at the room of the Law Society, St. John, the day following the death, November 25, when on motion of the Hon. John H. Gray, Q. C., (12) the Hon. John Wesley Weldon, Q. C., took the chair, and William M. Jarvis was appointed Secretary.

On motion of S. R. Thomson, Q. C., (13) it was

Resolved, That the following be a committee to prepare resolutions, expressive of the deep sense felt by the profession in the loss sustained by the death of the lamented Chief Justice Parker: Hon. John W. Weldon, Q. C.; Hon. John H. Gray, Q. C.; D. S. Kerr, Esq., Q. C.; A. R. Wetmore, Esq., Q. C.; Robertson Bayard, Esq.; and William P. Dole, Esq.

The committee having retired for deliberation returned, and reported the following resolutions, which on motion of S. R. Thomson, Q. C., seconded by William Wedderburn, Esq., were adopted:

Resolved, That the members of the Bar are deeply impressed with the irreparable loss which the Bench and the Bar and the public have sustained by the death of the Honorable Chief Justice Parker, whose value as a Judge and excellency as a man have been rarely equalled in any age or country.

Resolved, That of all those whose talents and virtues have adorned the Bench of the Supreme Court of this Province, none has discharged the duties of high office more faithfully and zealously than he, who, after a service of thirty-one years, during which he enjoyed the esteem and admiration of the profession, and the respect of the whole community, has been thus removed.

Resolved, That the members of the Bar attend the funeral of the late Chief Justice in suitable mourning, and wear the same for ten days.

On motion of George Blatch, Esq., seconded by G. Sidney Smith, Esq., it was further

Resolved, That the members of the Bar attend in full professional costume, with crape on the arm, and that attorneys be requested to attend in black suit and white neckties and crape on the arm, and that the members of the profession meet at the rooms of the Law Society on Tuesday next at half-past one o'clock for the purpose of proceeding to the funeral.

On motion of William Jack, Q. C., Advocate-General, seconded by D. S. Kerr, Q. C.:

Resolved, That copies of the first of these resolutions be transmitted to the family of the deceased.

J. W. WELDON, Q. C.,
Chairman.

WM. M. JARVIS,
Secretary.

By request of the Lieutenant-Governor the day of the funeral was observed in St. John in a suitable manner by closing the places of business.

GOVERNMENT HOUSE,
FREDERICTON, NOV. 25, 1865.

SIR,—

I am directed by His Excellency, the Lieut.-Governor, to inform you that His Excellency has ordered the Government offices in this city and St. John to be closed on Tuesday next, the day fixed for the funeral of the late Chief Justice Parker.

In making this intimation, His Excellency feels assured that he best anticipates the wishes of yourself and your fellow-citizens; and that means will be taken, so far as may be practicable, publicly to recognize the loss which the community has sustained by the death of this distinguished Judge and admirable man.

I have the honor to be, sir,

Your most obedient servant,

D. WILSON,
Private Secretary.

ISAAC WOODWARD, ESQ.,
Mayor of St. John.

The following letter shows that no time was allowed to elapse in selecting a successor to the Chief Justice:

FREDERICTON, 4th December, 1865.

SIR,—

I have the honor to inform you that, by the advice of my Executive Council, I have appointed the Hon. Mr. Justice Ritchie to the office of Chief Justice, in the room of the late Honorable Robert Parker, and that I have filled the vacancy thus occasioned in the Bench of the Supreme Court by the nomination of Hon. John W. Weldon, Q. C., as a Puisne Judge. Chief Justice Ritchie is very decidedly the ablest

lawyer now on the Bench, and will, I have no doubt, discharge the duties of his high office in a perfectly satisfactory manner. His appointment has my entire concurrence and approval; and I am satisfied that in selecting him for the post a sound discretion has been exercised. Mr. Justice Weldon was for several years Speaker of the House of Assembly, from which office he retired in 1850, since which time he has not taken any part in public life. He is, I believe, a sound, though not a brilliant, lawyer, and is a man of undoubted integrity and principle. In recommending for promotion to the Bench a gentleman not engaged in politics, my Council have adopted a course which might with advantage be more generally pursued.

I have, &c.,

ARTHUR H. GORDON.

HON. EDW. CARDWELL.

The Secretary of State for the Colonies replied as follows :

DOWNING STREET,

21 Dec., 1865.

SIR,—

I have the honor to acknowledge the receipt of your dispatch of the 28th of November, reporting the death of the Honorable Robert Parker, Chief Justice of the Supreme Court of New Brunswick. I have learnt with great regret the loss sustained by the Province through the death of so eminent and respected a member of the community.

I have, &c.,

EDWARD CARDWELL.

HON. A. H. GORDON,
Lieut.-Governor.

DOWNING STREET,

22 December, 1865.

SIR,—

I have the honor to acknowledge the receipt of your dispatch of the 4th of December, in which you report that, by the advice of your Executive Council, you have appointed the Honorable Mr. Justice Ritchie to the office of Chief Justice of New Brunswick in the place of the late Honorable Robert Parker, and Mr. John W. Weldon, Q. C., to succeed Mr. Ritchie as a Puisne Judge of the Supreme Court. These

appear to be very satisfactory appointments, and I observe with pleasure your remarks upon the course adopted by your government.

I have, &c.,

EDWARD CARDWELL.

HON. A. H. GORDON,

Lieut.-Governor.

With the death of Chief Justice Parker closes the third great epoch of the Bench of the Supreme Court of New Brunswick. The first was in 1809, the quarter of a century of its existence from organization. In that year Ward Chipman, after holding the office of Solicitor-General for twenty-five years, succeeded Joshua Upham on the Bench, and Attorney-General Bliss succeeded George Duncan Ludlow as Chief Justice.

The deaths of Upham and Ludlow closed the appointments of 1784; their associates James Putnam and Isaac Allen had preceded them to the tomb. The second epoch was 1834, the end of the first half century of the organization of the Court. In that year Hon. John Saunders, Chief Justice, died, followed by the elevation of Ward Chipman, Jr., one of the puisne judges, to his seat as Chief Justice; and to the vacant judgeship thus created James Carter was appointed. In this year John Murray Bliss died, followed by the appointment to his place on the Bench of Solicitor-General Robert Parker. The third epoch was in 1865. In that year Sir James Carter resigned the office of Chief Justice, and Judge Parker was appointed to his place; and to the seat on the Bench thus created Attorney-General Allen was appointed. By the death of Chief Justice Parker, Judge Ritchie succeeded to that office, while to the vacant Judgeship John W. Weldon was appointed. With the year 1865, ever memorable in the annals of the Bench, ended the appointments from Downing Street of Judges of the Supreme Court of New Brunswick.

NOTES.

(1). Michael C. Hailes, was a son of Lieut.-Col. Harris Wm. Hailes. The latter at one time was president and Commander-in-Chief of the Province. The son, Michael, practiced law in Fredericton. He was registrar of the Court of Chancery and Deputy Surrogate for York County. In consequence of failing health he went to the Island of St. Croix, West Indies, where he died April, 1822, in the twenty-sixth year of his age.

(2). Married at St. John, May 21, 1816, by Rev. George Pidgeon, Rector, Frederic Duvernety, Esq., to Eliza Jane, daughter of Robert Parker, Esq., Comptroller of Customs.

Died, June 2, 1832, on voyage from Ceylon, East Indies, Major Frederic Durvernet, Assistant Quartermaster-General.

(3). John M. Robinson, was the youngest son of the Hon. John Robinson, who at his death, in 1828, was mayor of St. John. John M. at his death in 1867, was solicitor of the Bank of New Brunswick. He married the youngest daughter of Thomas Millidge, Esq. J. Morris Robinson of St. John, banker, is a son.

(4). Charles J. Peters, was a son of James Peters of Gagetown, who was for many years the representative of Queens County in the Assembly. On completing his studies in the office of Ward Chipman he went to Upper Canada, now Ontario. The following is a letter to Ward Chipman:

KINGSTON, UPPER CANADA,

March 1, 1797.

DEAR SIR,—

It was a hard moment when from necessity I formed the determination of leaving all my friends to settle in a strange land. Perhaps at no season of life I could have felt the separation more keenly; for a young man, just commencing in life, to separate, and perhaps forever, from those whom the early scenes of youth in a particular manner endeared to him,

he owes what may be his after situation in life, is, as experience has taught me, more trying than anticipated; however, the worst is, I hope, now past, and cutting as it was to my sensibility and feelings, I have, thank fortune, no reason as yet to repent of my resolution. As far as I can yet judge I have undoubtedly bettered my situation. With economy and my present practice. I can decently live without any assistance from my father. That my business will increase I have certainly good reason to hope. The country is fast increasing in population and wealth, and I think I stand as good a chance of business as any of my brother practitioners. I might perhaps in the end have done better in Lower Canada, but an immediate introduction to business was a great thing; beside that, I would prefer living here.

Yours most truly,

CHARLES J. PETERS.

WARD CHIPMAN, ESQ.

The death, December, 1798, of Elias Hardy, Clerk of the Sessions and Clerk of the Common Council of St. John, was followed by the return of Mr. Peters to accept these offices. The other members of the St. John Bar were Jonathan Bliss, Ward Chipman, Thomas Wetmore, and William Botsford. In 1808, Mr. Peters succeeded William Botsford as Judge of the Vice-Admiralty Court. The elevation of Attorney-General Bliss and Solicitor-General Chipman to the Bench in 1809, largely increased the practice of Mr. Peters. In 1820 he resigned his civic office to his son, James Peters, who died in Scotland where he went on account of his health, in 1847, aged 47 years. When Ward Chipman in 1825, was appointed to the Bench, Mr. Peters succeeded him as Solicitor-General, which office he held to the death of Attorney-General Wetmore in 1828, when he moved to Fredericton. From 1809, for many years thereafter he had the largest income, from his profession, of any member of the Bar. In 1819, he built the large stone dwelling on Coburg Street, St. John, having a lawn extending down to Union Street. Before leaving Upper Canada, in 1799,

he married Miss Reed, who died in 1821, aged 37 years. Their youngest and last surviving son was the late Dr. M. H. Peters of Carleton, St. John. Mrs. Coster, widow of Rev. Frederic Coster, was the last survivor of the family. In 1823, Mr. Peters married at St. John, Miss Forbes, daughter of Dr. Forbes of the Island of St. Christopher, West Indies. Hurd Peters, C. E., of St. John, is a son of that marriage. Mr. Peters, in pressing his claims for the office of Chief Justice, stated he was the father of the largest family in New Brunswick. As his rival, Judge Bliss, had only one son, and Judge Chipman no family, the reference was for them. Attorney-General Peters died at Salamanca Cottage, a short distance below Fredericton, February 3, 1848, aged 76 years, the third Attorney-General of the Province and the last under a life tenure.

(5). Thomas Baillie was married at Fredericton, August 17, 1832, by the Venerable Archdeacon Coster, to Elizabeth, second daughter of the Hon. William F. Odell, Provincial Secretary.

(6). Robert Leonard Hazen, son of William Hazen, Sheriff of St. John and Provincial Treasurer at his death, in 1816, was born at Fredericton in 1808. He studied law in the office of Robert Parker. In 1837 he married his cousin, a daughter of the Hon. William Botsford. Mr. Hazen was called to the Bar in 1831, and in 1843 was made a Queen's Counsel, and in 1846 he became Judge of the Court of Vice-Admiralty and Recorder of St. John. At the general election of 1842, Mr. Hazen was elected one of the members for the city of St. John, and again in 1846. In 1849, he was appointed to a seat in the Legislative council. From 1843 to 1854, he was a member of the Council, and again in 1856-7. When the union of the Provinces took place July 1, 1867, he was by royal proclamation appointed to a seat in the

Senate of Canada. On the death of Chief Justice Parker, Mr. Hazen in conversation, told me that Governor Gordon sent a messenger to him with an offer of a puisne judgeship. This offer he declined. He was then asked if he would accept the Chief Justiceship if it were offered him. To that enquiry he sent for reply that he would give an answer when the offer was made. The offer, however, was not made, as the Attorney-General, Albert J. Smith, was a strong personal friend of Judge Ritchie, and supported him to succeed Chief Justice Parker. In the varied positions held by Mr. Hazen, at the Bar, in the Legislature, in the city government, his power and influence were great; his talent and sterling honesty ever commanded respect. In person, Mr. Hazen was of fine presence. He died at St. John, October 18, 1874, aged 66 years, leaving one son, Frank B. Hazen, since deceased. The residence of the late R. L. Hazen is now owned and occupied by J. Douglas Hazen, M. P. P.

(7). John M. Wilmot was the father of the late Lieut.-Governor R. D. Wilmot. He removed from St. John to his property in Sunbury County, known as "Belmont," (8). The property is still in the possession of his descendants.

On Thursday, March 30, 1814, a special Court was held at St. John, Judge Chipman presiding, to try one Michael McComb, a soldier in the King's 8th Regiment, for the murder of Catharine Trafton. The prosecuting officer was Ward Chipman, Jr., who was Clerk of the Crown on the Circuits. The trial lasted from 10 a. m. to 6 p. m. The jury, after an absence of twenty minutes, came into Court with a verdict of guilty. The Judge immediately pronounced sentence of death, to be carried into affect on April 13th following, which was done accordingly in front of the gaol.

(9). Died at London, June 11, 1847, William Botsford Chandler, eldest son of the Hon. E. B. Chandler. The interment took place at West London cemetery, Brompton. Among those present as mourners were Judge Parker, Hon. Samuel Cunard, E. D. Archibald, Moses H. Perley, and Henry G. Simonds.

(10). Mr. Berton made the first attempt at revision of our statute law, by collecting the statutes in some order, omitting those repeated. The first regular revision took place in 1854, when three volumes were published. The first volume contains all laws relating to practice of Courts, and other public matters including public lands, revenue, schools, militia, etc. The second volume contains the Acts of 1854 and unrevoked public Acts; the third volume contains local and private Acts then in force. The second revision may be found in "The Consolidated Statutes" which went into operation in 1877. The last revision was in 1903.

(11). Sir Albert J. Smith was born in Westmorland County in 1822, and was called to the Bar in February, 1847, and was subsequently appointed a Q. C. He was a member of the Executive Council of New Brunswick from 1856 to 1863, and also in 1865. He was Attorney-General from 1862 to 1863, and again in his own Administration in 1865. He was a delegate to England and Washington on public business on several occasions. Was first returned to the House of Assembly from Westmorland in 1850 and continued till July 1st., 1867, when he was returned from the same County as a member of the House of Commons, and continued to represent Westmorland till the general election of 1882, when he was defeated by the present Senator Josiah Wood.

When Sir John A. Macdonald's government was defeated in 1874, and Alexander Mackenzie was called upon to form a government Mr. Smith became

Minister of Marine and Fisheries. For his services before the Halifax Fishery arbitration he was made a K. C. M. G. He was a man of fine presence, and was most genial and pleasant in his manner. He died at Dorchester, N. B., in 1883.

(12). The Hon. John H. Gray, D. C. L., Q. C., for many years was a prominent figure in the professional and political life of New Brunswick. He was member for the City and County of St. John in the House of Assembly from 1850 till the union in 1867, and from the latter date till 1872 represented the same constituency at Ottawa. He was for a time speaker of the House of Assembly, and also Attorney-General of New Brunswick, and was also a delegate to the Charlottetown and Quebec Conventions in 1864, respecting the Confederation of the British North American Provinces. He was umpire between Great Britain and the United States, under the Treaty of Washington, 1857-1858; also Her Majesty's Commissioner on the Tenant question in Prince Edward Island, 1860-1861; and Dominion Arbitrator under the British North America Act, 1867, between the Provinces of Ontario and Quebec. After British Columbia became a Province of Canada, he was appointed to the Bench of that Province, and died there June 6, 1889. He was a man of fine presence, great urbanity of manner, and a polished and eloquent speaker.

(13). Samuel Robert Thomson, Q. C., was for years one of the leaders of the New Brunswick Bar. He practised his profession in St. John, and was engaged in all the important cases of the day. His greatest forensic achievement was, as Counsel for the British Government, before the Halifax Fisheries Commission in 1877. The Commission was convened under Articles 22 and 23 of the Treaty of Washington

of May 8, 1871. An award of \$5,500,000 was made in favor of Canada and Newfoundland. Mr. Thomson's speech was remarkable for its eloquence, its mastery of the details of evidence, and its comprehensive grasp of the principles of municipal and international law. He died in London, England, in November, 1880, where he had gone to argue a case on appeal before the Judicial Committee of the Privy Council. Among his friends he was a most delightful and entertaining companion, cultured, extensively read, and with a quick and keen appreciation of the humorous. His addresses before juries, as well as his arguments before the court, were notable for great clearness, felicity of expression, and breadth of legal knowledge. At the time of his death he was 55 years of age.

CHAPTER XVI.

HON. GEORGE F. STREET.

George Frederick Street was born at Burton, Sunbury County, July 21, 1787, and was baptized by the Reverend John Beardsley, Rector of Maugerville, whose mission covered the whole of the county. His father, Samuel Denny Street, was a lieutenant in the Royal Fencible Americans, and was in the Government service at Fort Howe, St. John, when the Loyalists arrived. The following is the first appearance of a name for over a century on the roll of the New Brunswick Bar:

SAMUEL DENNY STREET,

Notary Public and Conveyancer, will transact a Notarial business, etc., etc., for the present at Major Studholme's office, Fort Howe.

Parr Town, March 7, 1784.

At the organization of the Supreme Court of New Brunswick, 1785, Samuel Denny Street produced a certificate of having been an attorney in another part of the King's dominions, and was admitted to practice in the Courts of the Province. He obtained a grant of a fine tract of land at Burton, which he named Elysian Fields, where he resided in the early years of the Province. As his family grew up he left the management of his farm with his sons, Edwin and Charles, and removed to Fredericton, where he had a large law business. His son, George F. Street, after spending some time studying law in the father's office, went to London to extend and complete his studies, and was admitted an attorney of His Majesty's Court of King's Bench. While in London, Judge Upham died, when Mr. Street, then in his twenty-first year, wrote the Secretary of State, requesting that his father might be appointed to the vacant seat on the Bench. The following is his letter:

No. 6 PHILPOT LANE, London,
27 November, 1808.

SIR,—

An application was made to you in June last on behalf of my father, Samuel Denny Street, of the Province of New Brunswick, in America, by my uncle, Thomas Street, of Philpot Lane, in consequence of a vacancy which was then supposed to have occurred in the Bench of the Supreme Court of that Province. Having this day been informed of the death of Col. Upham, which I am aware has caused that vacancy, which was merely ideal in the former instance, I hasten, in the absence of my father, to lay before you those claims, which his friends think authorize him to place himself before your notice. That it is his ambition to fill such a situation, I am fully sensible of; and were he fortunate enough to obtain this height of his ambition, I am equally sensible his utmost abilities would be employed to fill, with honor to himself and justice to his fellow-creatures, so exalted a situation. My father, Mr. Samuel Denny Street, had the honor of waiting on you several times last year, on the business of obtaining His Majesty's negative to an Act passed by the House of Assembly in New Brunswick for monopolizing the right of fishing in that Province, on which occasion he was employed as agent for the City of St. John to oppose it, and was fortunate to succeed, and April last returned to his home. I have mentioned this circumstance, wishing to recall him to your mind; and will now, as briefly as possible, relate those events in his life which have determined him to intrude himself on your notice. To fill the situation of a Judge, undoubtedly a gentleman conversant with the law must ever be considered most qualified. My father was bred to the law, and for many years past has practised in the Province as counsel and solicitor, such being the custom of the country, and is now senior counsel of the Province. He quitted the law, which he had followed as his profession in England, on the commencement of the American War, and entered the navy under Admiral Rodham, and went to America. When, finding the service of the navy not so active as his spirits led him to think, he entered the army, where he soon gained (with pride I say it) the confidence of his commander, who employed him on all enterprises against the enemy. At the close of the war he was of material service to the government in distributing the lands to the new settlers; he also, on that occasion, gave up a grant of lands.

which had been given to him for his services in the army, in order to accommodate and encourage the settlers, upon condition that he was to be entitled to claim as much more in any other part of the country which might be ungranted, but which claim has never been made, nor has he received any emolument from Government, now a period of two and twenty years, except his half-pay, as a reduced officer. During this time he has resided up the river St. John, on that part of the lands which he retained under the grant, and returned to the profession of the law, which he has followed with an unblemished character. My father's family is very large, being twelve in number, which is a powerful motive impelling me to make this application. Permit me, sir, to intrude a few moments more on your time, in expressing my earnest hope that this letter may receive that attention which the superior character of the best of fathers and one of the most upright of men deserves, and that you, sir, may use that influence which the high and honourable situation you hold enables you to do, to promote the wishes of a son, whose proudest boast would be that he added to the comfort of a beloved parent. I beg to refer you to two gentlemen, Mr. Glenie (1), who is now in London, and whom you may very likely know, and Mr. Venner (2), a principal merchant of St. John, to whom you may apply for any further account concerning what I have stated. I shall very soon be sending letters to New Brunswick, which will contain the information of my having made this application; and I am certain, was my father aware of the opportunity I have embraced, he would have addressed you on the subject, which I make no doubt he will do, as soon as possible, after he receives the information I shall give him.

I have the honour, etc.,

GEO. FRED. STREET (3).

Mr. Street, in 1818, then in his thirtieth year, returned to New Brunswick, and was admitted to the Bar. His absence in England for ten years well fitted him for professional work, taking a front place. In addition to his well-grounded legal knowledge, his talents as a speaker were of a high order. His associates at the Fredericton Bar were his father, Samuel Denny Street, Thomas Wetmore and George

Ludlow Wetmore. In 1821 George Frederick Street and George Ludlow Wetmore fought a duel. They were engaged against each other in a cause at Fredericton, and on leaving the Court House words passed between them which led to a challenge from Mr. Wetmore, which was accepted. Mr. Wetmore's second was John F. W. Winslow, afterwards Sheriff of Carleton County. Lieut. Davis, of the 74th Regiment, acted for Mr. Street. They met on Maryland Hill, near Fredericton, very early on the morning of October 2nd, 1821. Shots were exchanged, when Mr. Wetmore was struck on the head, surviving only two hours. Mr. Street and the two seconds fled to St. Andrews, crossing over to Robinstown, in the State of Maine. A reward of thirty pounds was offered for the apprehension of Messrs. Street, Winslow and Davis, or ten pounds for the capture of either of them. After absenting themselves for a few months they surrendered themselves to the authorities, and stood their trial. The Court opened at Fredericton, February 22nd, 1822, Judge Saunders presiding. The Solicitor-General Wm. Botsford, was the prosecuting officer, and the prisoners were defended by Ward Chipman, Jr., and Henry Bliss (4). The following is the charge of the learned Judge to the Jury:

GENTLEMEN OF THE JURY,—

Before you take this case into consideration, I must request you to dismiss prejudice by any attention to stories told out of doors, to which you cannot give any weight; but you will be guided by evidence, and carefully weigh that evidence. In the present case, the gentlemen at the bar stand indicted for the murder of George Ludlow Wetmore. The event of the party's death is made to appear by the doctors and others on the ground; that being established, it requires attention to see whether the prisoners are the perpetrators of this homicide. The evidence is but presumptive at best, and it should be considered in all such cases with attention, and, no doubt, in the present instance particularly. Murder is where a person in sound mind, and with malice aforethought, de-

liberately kills his victim. The prisoners are charged with this crime. Malice of two kinds are implied by law—express, where the minds are expressed by outward sense, such as lying in wait, etc.; and in this case murder by dueling, when it can be proved that the parties had gone to revenge themselves, it charges them indeed with express malice, but must be made out expressly. But does this malice apply to the prisoners? It appears by Mr. Taylor that some high words had passed between the deceased and Mr. Street at the Court House on Saturday. It appears it was about a writ, and the parties proceeded to high words. Expressions were made use of by Mr. Wetmore, treating the whole transaction in a rash manner. Mr. Miller heard high words between the parties, but being at the door did not hear the commencement of the affair, and, on the interference of the Attorney-General, they went on as usual, and they appeared to bear no malice. He says he saw the deceased as late on Monday night as twelve o'clock in good spirits, and had not the least idea of such a circumstance taking place. Thus it appears, gentlemen, that the parties, from this testimony, at least the deceased, had submitted to the injunction of his father, and in his mind had no malice or desire to quarrel. To bring it home to the prisoners, Mr. Segee was called. Mr. Miller or Mr. Taylor knew nothing subsequent. Mr. Segee got up at his usual hour, and shortly after heard two pistols in quick succession; he could distinguish a difference in the report; about six or seven minutes after heard two more; and soon after went to the place where the firing was heard and found the deceased with two wounds, one in the arm and one near the right temple; he was alive, but insensible; he (Mr. Segee) did not know the parties; on his way back to the house, saw two persons passing, and thought them to be the prisoners. But this will not answer; you must have positive proofs; his testimony, as far as it is material, goes little further, and his son's is much the same; they did not know the prisoners; one was examined before the coroner, and was cross-examined; could not decide on anything, for he would not swear; he only thought so, and spoke contradictory. No attention should be paid to that on so high a crime as this. Young Segee saw a pair of pistols; it appears that the parties stood about fifteen paces distance apart; and by the doctors, that the two wounds were by the same ball, and were given when the deceased was in the act of firing, and the ball received a different direction from the arm. There is no question about

the homicide; but it cannot be brought home to the prisoners; it is all presumptive proof, and that of the slightest kind. Nor did it appear by the evidence that there was any such as is contemplated in law; the authorities read by the counsel is good law; and you must, in all cases, have direct evidence of the fact to take a person's life. You will find it to be all circumstantial, and that it does not prove them to be the persons committing the crime. Should there be any doubt in cases of this kind, you should acquit the prisoners; but in this case it is not in any shape legally brought home. They stand charged by the indictment; and, indeed, I cannot say anything further upon the testimony, having explained the principal parts as far as I understood it. It was told it was a dark morning. One evidence, mentioning the dress of Mr. Street, said he had on a blue coat, another called it blue or black. It is proved by two witnesses (brothers to the party) that he never wore a blue or black coat. There were several witnesses called as to their character as gentlemen. Character is of great weight in all cases, particularly when there is but presumptive evidence; it assists you, gentlemen, in circumstances of doubt; and there the jury must weigh the case with greater doubt and attention on the part of the Crown. In all cases of circumstantial evidence, there is great room for doubt on the part of the prisoner; and where there is doubt, a jury should always be on the merciful ground, and acquit. Everything is liable to doubt in a civil case. Where the story is, however, weighed, and the evidence is strong, it is considered proper to strike a balance. This is not the case in criminal cases; there you are not to weigh; the evidence must be positive; and in doubtful cases you must acquit the prisoner. Therefore, if you have a doubt, acquit the prisoners. Several gentlemen have been called, who speak in the most favourable light for the prisoners as gentlemen; and according to the evidence you are to say Guilty or Not Guilty.

The jury then withdrew from the Court-room, and, returning in a short time, gave a verdict of "Not guilty." (5).

When Ward Chipman, in 1823, was appointed Solicitor-General, Mr. Street became Advocate-General, then valuable as a stepping-stone to higher appointment. At the general elections which took place in 1827, Mr. Street unsuccessfully contested

York County, and again in 1830 at the elections which took place in consequence of the death of George IV. The successful candidates at the last-named election in York were William Taylor, John Allen, John Dow and Richard Ketchum. On the opening of the House, Jedediah Slason petitioned against the return of Mr. Ketchum. In the return Slason was but ten votes behind Ketchum. The result of the petition was to unseat Ketchum and give the seat to Slason. At that time York included Carleton, Victoria and Madawaska.

An interesting libel case, *Spearman vs. Wilson*, was tried at Fredericton in October, 1832, before Judge Chipman. The plaintiff, Mr. Spearman, was an officer in the customs at St. Andrews, and Mr. Wilson, the defendant, was a leading merchant. The counsel for the plaintiff was Mr. Street, for the defendant Alexander Stewart, a leader of the Nova Scotia Bar. The trial lasted four days, and upwards of thirty witnesses were examined. The speeches of counsel were of a high order, Mr. Stewart occupying three hours and Mr. Street four hours. The charge of the learned Judge was also lengthy and exhaustive. The jury found a verdict in favor of plaintiff for one shilling damages. From the organization of New Brunswick His Majesty's Council discharged both legislative and executive duties. In 1833 a separation took place, as appears from the following:

His Majesty, King William, having been pleased to appoint two separate Councils, to be respectively called the Legislative Council and the Executive Council of the Province, was pleased to nominate the following members of the Executive: Thomas Baillie, Frederick P. Robinson, William F. Odell, George Frederick Street, John Simcoe Saunders.

The creation of two Councils gave dissatisfaction to both branches of the Legislature. It was objectionable to the Legislative Council, as the change deprived it of executive functions; it was viewed with

hostility by the House of Assembly by reason of those appointed to it. Thomas Baillie became Surveyor-General; William F. Odell, Provincial Secretary; Frederick P. Robinson, Receiver-General; George F. Street, Advocate-General; and John Simcoe Saunders (6) had a seat in both Councils. In the expenditure for 1833, out of the King's casual and territorial revenues is the following:

Fees remitted to England by the Provincial Secretary. William F. Odell, for the letters patent establishing two Councils in the Province, twenty-six pounds fourteen shillings and five pence.

The House of Assembly lost no time in sending Charles Simonds and Edward B. Chandler to England to lay before the Government a number of grievances; one, the change in the constitution of the Province, by the formation of an Executive Council separate from the Legislative Council. As to this part of the mission the delegates was not successful, as the following memorandum from the Colonial Secretary indicates:

Mr. Secretary Stanley entirely approves the general principle on which the manner of separating the Councils was founded, and without further proof of practical inconvenience resulting from the same, he should think it far from expedient to disturb arrangements so recently adopted by His Majesty's government.

In consequence of a conflict (7) between the House of Assembly and the Executive Council, Sir Archibald Campbell sent Mr. Street to London. He was followed by William Crane and L. A. Wilmot as representatives of the House of Assembly. The elevation of Robert Parker to the Bench in 1834 was followed by Mr. Street becoming Solicitor-General. In 1839 he was appointed to a seat in the Legislative Council, together with John Robertson, Thomas Wyer, Harris Hatch and William B. Kinnear. On the resignation of the Hon. William Botsford of his seat on the

Bench, Sir William Colebrooke recommended the appointment of Mr. Street to the vacancy in the following dispatch to the Colonial Office:

Mr. Street, from his standing at the Bar, his services as a law officer of the Crown, and the professional estimation in which he has long deservedly been held, give him a claim to the support which he has requested me to afford to his application; and although I consider it right to recommend him on these grounds, I do not wish to be understood as failing to appreciate justly the zealous services which he has on different occasions rendered in other capacities, and especially as a member of the Executive Government.

The Colonial Secretary at the time was Mr. Gladstone, and the following is his dispatch authorizing the appointment of Mr. Street and other officials:

DOWNING STREET, London,
29 January, 1846.

SIR,—

With reference to your dispatch of the 29th of October and 29th of December last, I have to acquaint you I have submitted to the Queen the name of George Frederick Street for an appointment to the office of Puisne Judge, and of Mr. William Boyd Kinnear to be Her Majesty's Solicitor-General, and Mr. William Wright to be Her Majesty's Advocate-General for the Province of New Brunswick; and Her Majesty having been pleased to approve thereof, I transmit herewith three warrants under the Royal Sign Manual, authorizing you to cause letters patent to be passed under the Public Seal of the Province appointing these gentlemen respectively to the offices in question, and I have to desire that you will obtain from each of them, and remit to Mr. Smith, the chief clerk of my office, the sum of eleven pounds five shillings and six pence, being the amount of fees and stamp duty payable on instruments of this nature.

I have, etc.,

W. E. GLADSTONE.

SIR W. M. G. COLEBROOKE,
Lieut.-Governor.

The elevation of Mr. Street to the Bench (then nearing three score years of age) removed from the Bar one of its highest lights. To a thorough know-

ledge of law he added the faculty of riveting the attention of the jury, and what to a client is very important, he was very successful in securing a verdict. He travelled the circuits, and retainers were always waiting him. In spite of his partial deafness, which interfered somewhat with the discharge of his judicial duties when on circuit, he was an efficient Judge. Towards barristers and witnesses, at a trial, he was ever courteous, and his rulings were seldom questioned (8).

NOTES.

(1) James Glenie was a prominent figure in the early political life of the Province. He wrote several lively political pamphlets, and his chief opponent in that line was Edward Winslow. The latter did not however, write over his own name. For further references to Mr. Glenie see *ante* pages 79 and 150. The earliest pamphlet in the writer's possession by Mr. Glenie is one of 1795, being a speech to the freeholders of the County of Sunbury on political affairs.

(2) Mr. Venner was a prominent merchant of the City of St. John in the early days of Provincial times. He belonged to a class of those times who laid the foundation of our commercial and industrial life.

(3) The Secretary of State at the time was Lord Castlereagh. See *ante* pages 162 and 167. Samuel Denny Street failed to get the judgeship, but we must admire the manly letter of his son asking for the position for his father. Attorney-General Bliss and Solicitor-General Chipman at this time had both been twenty-four years in office, and for years had been waiting for promotion to the Bench. From 1796 to 1803, and again from 1809 to 1816, Samuel Denny Street was one of the representatives in the House for Sunbury. In 1819 Governor Smyth appointed

him to a seat in the Council. His eldest son, Thomas, was Captain in the employ of the East India Company. Thomas had two sons, Samuel Denny who died at St. George, Charlotte County, N. B., in 1837, aged twenty-two years, and George D., barrister at St. Andrews. He died in 1882, aged seventy years. The other sons of S. Denny Street, besides Thomas, were George Frederick, the Judge; Samuel Lee, who died at the Island of Tobago, West Indies, in 1803, in his twenty-first year; William Henry, for many years a merchant of St. John; John Ambrose, a member of the Bar, and for a time Attorney-General; Alfred L., also a member of the Bar, who died at St. Andrews. He was married to a daughter of Dr. Alley, Rector of St. Andrews; Samuel Denny Lee, over forty years Rector at Woodstock; James, a merchant of St. Andrews, with Edwin and Charles, who continued, to the time of their deaths, to reside on the old homestead—Elysian Fields. There were two daughters: one married Nathaniel Hubbard, of Sunbury, the other George D. Berton, for many years Sheriff of York. S. Denny Street died at the residence of his daughter, Mrs. George D. Berton, Fredericton, December 11th, 1830, in his seventy-ninth year. He was short in stature, thick set, wore a queue, knee breeches and gaiters, a blue cloth coat, full skirted flaps over the pockets, and adorned with brass buttons; the waistcoat large and buff, the necktie white and of large proportions. He was a gentleman of the old school, among the last in dress and style in New Brunswick during the first third of our Provincial life.

(4) Henry Bliss was a son of Chief Justice Bliss. After practising his profession in New Brunswick for a time he removed to England, and was admitted to the Bar of that country. He was a member of the Inner Temple. In 1839 he published a pamphlet on "The Re-construction of Her Majesty's Government

in Canada." A few sentences as to his views are interesting in the light of subsequent history. He writes:

A rumour has been for some time circulated, by what authority is indeed unknown, and with what favour or countenance is equally uncertain, but the report is too frequently repeated not to have some foundation and deserve remark, that a plan is in preparation for the union of all the North American Colonies, in what is termed a federal system of government; the meaning of which is presumed to be to leave to each colony its legislature, and give the whole together another superior convention, composed of deputies from each Province.

Of this we look in vain for any example in our own dominions, and the nearest precedent in foreign countries is one of no favourable omen to British Colonial power, the Congress of the United States of North America. Without any intention therefore, to pass a censure on the institutions of that country, or to make an offensive comparison with our own, but solely because theirs are now, and often on other occasions, held up as a model for our imitation, it becomes necessary to examine the nature of the American system with a view to its fitness for Colonial dominions.

The principle of confederation which the writer condemned has since been adopted in the British North America Act, 1867. The pamphlet is, however, well written; contains many valuable reflections on government in general; draws upon ancient and modern systems to illustrate the author's line of argument; and contains the draft of a proposed bill, the provisions of which, the author thinks, would be suitable to effect satisfactory colonial union.

(5) The duel which took place between George Frederick Street and George L. Wetmore, Tuesday, October 2nd, 1821, resulting in the death of Mr. Wetmore, caused great interest and excitement at the time. The parties were both professional men practising law in Fredericton; their social positions were the most respectable; they both had many friends, and the fatal result to one of the principals deeply impress-

ed upon the public mind at the time the circumstances of the encounter, so tragic in its ending. The difficulty leading up to the duel arose out of the trial of a case in assessing damages on a writ of inquiry before the Coroner of York, William Taylor, against the Sheriff for false arrest and imprisonment. During the progress of the trial, which took place Saturday, September 29th, 1821, Mr. Wetmore, counsel for the plaintiff, Jacob Smith, and Mr. Street, counsel for the Sheriff, had hot words between them, and in consequence Mr. Wetmore sent a challenge to Mr. Street. John Francis Wentworth Winslow acted for Mr. Wetmore, and Lieutenant Richard Davis, of the 74th Regiment of Foot, for Mr. Street. The meeting took place at Maryland, about four miles from Fredericton. The late Judge Street has left quite a full account of the circumstances leading up to the dispute and the occurrences attending the duel. It is written in a fair and apparently impartial spirit, and I quote largely from his written statement. Mr. Street says:

I had at first some doubt in my own mind whether the length he had gone and the expressions he used, did not leave it incumbent on me to take further notice of it, but on consideration, and consulting a friend, it appeared that in resenting the insult he had given me on the spot by raising my hand to him was sufficient on my part, and that it rested with him to take further steps if he thought proper, besides which, being no duelist by profession, I was willing to avoid one if I could with credit to myself, as well from a principle of abhorrence I have to that mode of settling disputes, as also from the consideration that we were both men with families. If, therefore, he had stopped, I should not have proceeded further in the business; but on the next morning, about eleven o'clock, I received a message from him by Mr. Winslow, requesting I would meet him next Tuesday fortnight at Robbinstown. To this I positively objected, declaring to Winslow that I would never consent to a matter of that nature laying over for upwards of a fortnight and coolly go out to fight. I pointed out to him the great impropriety of it on many accounts, and that he must be aware

that matters of such a nature, if they were to be settled in the way he proposed, could admit of no delay, and that if Mr. Wetmore was determined that I should meet him, I would do it, provided that it took place immediately, but not otherwise. Winslow expressed great concern that it should be brought to an issue, and that he should have been compelled to be concerned in it, alleging that he had exerted his influence with Wetmore to excuse him, or not to proceed in the business, but in vain. He then proposed that we should meet at the Block House, on the Oromocto, on the next Tuesday morning. To this I again rather objected, first on the ground that it was out of the way to procure assistance or removal in case of accident, and that I thought it would be better settled the next morning somewhere near town, but it was agreed that I should send a friend to him at three o'clock that afternoon and they could arrange the time and place of meeting. Something was then said about pistols. I told him I had none, nor did I know where to procure any; that as Mr. Wetmore was the challenger he, of course, would provide weapons, which I should leave altogether to him, having nothing to do on my part but to be on the ground at the time and place as might be appointed. He said Wetmore had provided himself with the pistols Glenie and Coffin had fought with, and he supposed the brace would serve us both. I told him I should be perfectly satisfied with any arrangement that was fair and honourable, and that I should leave it to him and my friend to see that there was no advantage on either side. Upon this we parted, and after Church I saw my friend on the subject, and gave him the necessary directions where to meet Winslow that afternoon at his own appointment. I then went into a history of the business with my friend, and begged his candid opinion as to my conduct, whether he thought me in the wrong; and his reply was, no; he could not say, as a friend, that he would wish me to have acted otherwise, but as we both had families, it was a pity it could not be accommodated in some other way. I told him candidly my objections to dueling, and my readiness to meet any proposition that might be consistent with my honor and respectability; but conscious as I was of being on the right side, it did not rest with me to make any concession, to which he assented, but fully agreed with me that no delay should take place. He attended Winslow's appointment, but missed him that afternoon, and could not get a meeting with him until eleven o'clock the next morning, when it was

arranged that the meeting should take place the following morning at Maryland, four miles from town. In the course of that day (Monday), Mr. Winslow being anxious to get the matter settled amicably, if possible, was authorized by Wetmore to propose, that as he conceived the whole matter rested upon my first observation, he would retract everything he had said after it if I would explain that. This was communicated to Davis, who immediately saw me on the subject. I then declared to him that I was ready to give every explanation of the observation, which was that I meant only that I thought that particular transaction was not a gentlemanly one, and in saying so I spoke what I thought then, and what I continued to think, and ever should think. It was what I would not have done myself, and what I did not think would have been done by any other gentleman in the profession; that my observation was intended to be confined to that particular transaction, and not to throw any reflection on Mr. Wetmore's general character; beyond this I could not go without belying myself and stating what I did not think to have done, which would not only have rendered me contemptible in my own eyes, but in the eyes of everyone else. Wetmore was not satisfied with this, and it was settled that the meeting should take place. In the evening of the same day Davis received a note from Mr. Winslow, requesting he would provide a brace of pistols, as he understood from Wetmore that only one of his would be fit for use—an accident having happened to the other. It was then so late that Davis had no time to look for a pair, and expressed much surprise at such an intimation. However, he borrowed a small pair from a friend, not wishing to be without one when he went to the ground; but at the same time having seen Winslow, requested that he ought to examine Mr. Wetmore's pistols that evening with him (Winslow), to which the latter agreed, and upon examining them Davis found them to be a superior pair, and such as are used in such cases, and did not find anything the matter with either of them. The cock of one went a little more stiff in the cocking than the other, but there was no difference in going off. It was therefore agreed that I should have one of them. Davis and myself rode over to Maryland the next morning, and, after waiting about on the road for between twenty and thirty minutes, Wetmore and Winslow appeared. We fastened our horses in the bushes, and retired, all of us, into the woods, found a piece of ground fit for the purpose. A spot was fixed on in the rear, but

near one of the houses in the settlement, but entirely out of sight. The ground was measured by the seconds, when Wetmore immediately went and took his stand where his second stood. I then took mine where Davis stood. Nothing was said. The seconds retired for a few minutes and then came to us. Lots had been drawn between them for the choice of pistols, which on the first fire fell to Davis, who chose what (if there was any difference) was considered the best pistol, that is, the one that had not the stiffness in the cocking. Davis then informed us both that we must keep our pistols down until the signal for firing was given, when we must raise one arm and fire as quickly as possible without any aim or cessation. We both received our pistols on the full cock. I put my arm down close by my side, and when the signal was given, half raised it, and fired on the ground, my ball struck the ground a few yards from me. I did this from a desire to prevent accident on my part, having from the beginning no wish or intention to take his blood, having gone there solely with the view of defending my character from imputation, and not from any feeling of revenge or malice against him, and with the most sincere desire that it should not end in an accident to either of us.

Both shots missed the mark, and then some conversation took place between the seconds to stop further proceedings. This attempt, however, came to naught. The narrative then goes on:

The pistols were re-loaded by the seconds, though not in our view; Winslow then said that as I had the benefit of the choice of pistols in the first fire, he thought he, by right, had the choice in the second fire for his friend. Davis replied that the choice having been made by lot in the first fire, it ought equally to be so in the second, but as he knew I would rather that the advantage (if there was any) should be against me than for me, he would give him the choice, upon which Winslow chose the pistol I fired with first as the one supposed to be the best, if anything, and which had been re-loaded by Davis; and I received the pistol Wetmore fired with first, which had been re-loaded by Winslow. When the seconds came to the ground, Winslow went up to Wetmore and had a minute's private conversation with him, in which (as he has since informed me) he communicated to him what had passed between him and Davis on the subject of stopping further proceedings, but he still persisted in saying he would

have another shot, and then he would stop and leave it to professional men, or something to that effect. In the second fire I did not think I ought, in justice to myself and family, purposely to throw it away, having thrown it away in the first, and he persisting in proceeding, and apparently to me, with a determination to hit me if he could, especially as he, in the second instance, kept his arm half raised before the signal was given, which would naturally enable him to bring his pistol to the level quicker than I could. I kept my arm down close to my side, as in the first fire, until the word was given, when I raised my arm at hazard and fired as quickly as possible. He did the same; but Winslow says his pistol went off first. I thought they went as near together as possible; Davis is of the same opinion. I had no view in my second fire whatever, nor had I the least expectation of hitting him; my intention was only to show him that I did not intend to throw away my fire purposely a second time, and that if he proceeded he must risk his own life, as well as mine. I hoped my fire would have missed him, but fatal chance ordered otherwise, the ball struck his pistol arm, glanced and entered the temple, he fell, and never spoke again. We ran to him. As to myself, I felt like one distracted. I raised him in my arms, and we all tried to make him speak, but without effect. Winslow ran to the house for assistance, and I despatched a boy on one of the horses to town to get a surgeon. Davies and myself remained with the deceased, supporting him until we heard the persons sent from the house approaching. We then retired into the woods to avoid being seen, and got round to our horses, where Winslow met us, and we were not observed by any one until we were some distance on the road from the fatal spot. Winslow again returned to the house to see that he was properly taken care of, when he joined us on the road. What I suffered that day in my own mind was beyond what I can describe, and yet I had the consolation of feeling fully acquitted of blame by my own conscience, knowing that I could not have acted otherwise. The result was what I little expected, both from my having no desire to take his blood and from my own ignorance of the weapon we used, having never been concerned in such an affair, and also from knowing that he had been out before, and was probably better acquainted with the business than myself. I therefore was fully impressed with the idea that the chances were against me, and that if an accident occurred it would be on my side. It appeared I had a very

narrow escape, for his ball was found in a stump behind where I stood, so direct in a line with me that it must have passed within a hair's breadth of my head. Whether it was the first or second ball, I know not. Thus ended this unfortunate and melancholy affair.

Speaking about the expediency of accepting the challenge, he writes :

There are circumstances that may justify a man, even in the opinion of the world, in refusing a challenge, but this was not a case of that description; and had I refused to go out with him, I feel confident that I should have been condemned by every member of society and disgraced.

He then proceeds to give in detail the reasons why he would have been condemned and disgraced in the public estimation, if he had refused to go out, which in those times, in consequence of a bitter code of morals obtaining, would not be considered sufficient. As to dueling itself, and the utility of it, he writes :

It is true, the letter of the law says what I have done is murder; but in the construction of the spirit of the law it has always been looked upon, the *prima facie* implication, that a man going out to fight a duel does it with a pre-meditated intent to kill if he can, which would bring the act within the definition of malice aforethought, that being the gist of the crime of murder; but in the administration of this law it has never been put in force. Where there has been no unfairness on the part of the survivor, or party accused, and so tender and considerate are juries in all countries on the subject, that even in cases where strong grounds of suspicion of foul play have existed, yet unless it could be actually proved such was the case, the juries have acquitted the parties. The law is therefore clearly looked upon by every English subject only as a protection against foul play taking place under the cover of dueling, and I believe there is no instance of the judges at home finding fault with juries for acquitting prisoners if they are satisfied that no foul play ever existed. The fact is, that although dueling is an evil, yet the world at large are so well aware of the benefit society derives from its being allowed to exist, under certain forms and regulations, that it is in all countries considered as productive of more good than harm, and a preventive of crimes of a deeper dye, such as assassination and

dark mysterious murders. Mankind must be different from what it is before you will prevent the strong tyrannizing over and insulting the weak without the fear of their being called to an encounter upon which both will be upon a level. The resentment of insult and injury is natural to an honourable mind; and in cases where the law can afford no redress, individuals will seek it in other ways, and if the weak are not allowed to resort to some general and established mode of redress, they will seek it in secret assassination, the human mind will degenerate into barbarism, the most dishonourably base and cruel, and that spirit of chivalry and greatness of character, for which the English race are distinguished, would very soon be lost.

He then quotes from Dr. Johnson, as to the opinions of that great writer and philosopher upon the subject of dueling, and continues in these words:

My honour and respectability are dearer to me than life, and when I am placed in a situation that obliges me to sacrifice both the former or risk the latter, I cannot for a moment hesitate which course to take. Such are my sentiments on this subject, and such is the principle upon which I have acted in this unfortunate affair.

Mr. Street then at the close of his statement express his appreciation of the conduct of the seconds, Winslow and Davis. He declares "nothing could be more honourable, considerate and humane," than their conduct throughout the entire affair. Happily the times have changed, and we have changed with them. The "code of honor," which, a century and less ago, impelled gentlemen to vindicate their honor, by reason of insult, real or imaginary, has entirely changed, and it is now more in accordance with common sense and the principles of Christian ethics. A man who sent a challenge in our time would gain no applause from public opinion, but, instead, would find himself restrained by the law.

Great excitement prevailed in the community after it became known that Mr. Wetmore had been killed. The "hue and cry" was raised, as appears from the

issue of the *Royal Gazette* of date October 9th, 1821. It is as follows:

Whereas, One George Ludlow Wetmore, of Fredericton, in the County of York, and Province of New Brunswick, Esquire, was murdered yesterday morning by one George Frederick Street, of Fredericton, aforesaid, Esquire, and

Whereas, One Richard Davis, of Fredericton, aforesaid, Lieutenant in His Majesty's 74th Regiment of Foot, and one John Francis Wentworth Winslow, of Kingsclear, in the County aforesaid, farmer, were aiding and abetting in the said murder, and

Whereas, They, the said George Frederick Street, Richard Davis and John Francis Wentworth Winslow, have since absconded and disappeared, "hue and cry" is therefore levied and raised against them, the said George Frederick Street, Richard Davis and John Francis Wentworth Winslow, and all his Majesty's peace officers and legal subjects, as well within the parish and county as elsewhere, are hereby called upon and requested to make fresh pursuit and "hue and cry" after them, the said George Frederick Street, Richard Davis and John Francis Wentworth Winslow, from town to town, and county to county, as well by horsemen as footmen; and if they, or either of them, shall be found, forthwith to carry him or them before some one of His Majesty's justices of the peace within the county wherein he or they shall be taken, to be dealt with according to law. And a reward of, thirty pounds (£30) is hereby offered to any person who will apprehend and secure them, the said George Frederick Street, Richard Davis and John Francis Wentworth Winslow, or ten pounds (£10) for either of them in manner aforesaid.

Dated at Fredericton, in the County of York,
this 3rd day of October, in the year of our
Lord 1821.

WILLIAM TAYLOR,
Coroner.

Great indignation was aroused among the friends of the accused in consequence of raising the "hue and cry." It assumed the guilt of the gentlemen involved, without trial, without any opportunity of defence. The three gentlemen fled from the place of the duel to St. Andrews, and crossed over to Robinstown, in

the State of Maine. They remained there a few months, then returned and surrendered themselves for trial. The trial of Street and Davis took place at Fredericton, beginning Thursday, February 21st, 1822. The trial was at Bar ; present—Judge Saunders, Judge Chipman and Judge John Murray Bliss. The latter, however, took no part in the cause, having previously taken an active part against the prisoners. The following jurors were sworn to try the case: Mark Needham, foreman, George West, Jacob Allen, William Dibblee, George Morehouse, Frederick Morehouse, John Bedell, Jr., John Manscon, George Garden, John Davidson, Charles Duff and Allen McLean. The prisoners were acquitted, and under the charge of Judge Saunders it could not well have been otherwise. Thus ended a case which at the time aroused more than Provincial attention.

(6) John Simcoe Saunders was a son of Chief Justice Saunders. See *ante* pages 274 and 359. He graduated at Oxford and also received his legal education in England. He was a member of Lincoln's Inn. He returned to New Brunswick and, in 1817, was admitted to the Bar. See his letter, *ante* page 341. After practising his profession at Miramichi for a time, he returned to England, and was admitted to the Bar there. See *ante* page 273. While in England he published a work on "Pleading and Evidence," still a most excellent book. It had a large sale in England, the United States and the Colonies, and has gone through many editions. In 1830 Mr. Saunders again returned to New Brunswick, became a King's counsel, and was recommended for the then recently created office of Master of the Rolls, which was approved by the Secretary of State; but as no adequate provision was made by the Legislature for paying his salary, the appointment did not take effect. In 1833, upon the division of the Council, he was appointed to

a seat in both the Legislative and Executive Councils. When his father died, in 1834, he applied for a seat on the Bench. Had Judge Carter not been appointed, the vacancy created by the appointment of Judge Chipman to the Chief Justiceship would have been filled by Solicitor-General Robert Parker, and the seat vacated by the death of Judge Bliss, to which Robert Parker was appointed, would have gone to Mr. Saunders. George F. Street preferring the office of Solicitor-General, all Mr. Saunders gained from the two vacancies on the Bench was the office of Advocate-General. From 1840 to 1843 he was Surveyor-General. In 1845 he was appointed Provincial Secretary, holding that office for three years, or till 1848, when it was made political. From 1840 to 1867 he was Clerk of the Circuits and Clerk of the Crown on the Circuits. This office applied to all the Circuit Courts of the Province, but in 1868 (31 Vic., Chapter 24) the law was changed, so that there was a Clerk for each County in the Province. On the death, in 1866, of William Black, President of the Legislative Council, Mr. Saunders was appointed to the position, holding it till his death in 1878. His father had also held the position of President, and for two generations father and son held for eighty-five years seats in the Legislative Council. A son, Col. John Saunders, died many years ago; a daughter, in 1856, married Montgomery Campbell, Private Secretary to Lieut.-Governor Manners-Sutton, and later Professor of Classics in the University of New Brunswick. Col. Montgomery Campbell, of Kings County, N. B., is a son.

(7) It would be impossible, under our present system of responsible government, for such a conflict to take place between the House of Assembly and the Executive Council. The government now can only retain power while it enjoys or can command the con-

fidence of the majority of the representatives. The moment a collision takes place between the executive and the popular branch of the Legislature, the former ceases to command popular support, and upon a vote hostile to the policy or measures of the government the executive is bound under constitutional usage to resign, and hand over the reins of power to those whose policy or measures can and do command the confidence of the majority of the public representatives. In 1836, in this Province, the principle of responsible government had not been adopted. It was adopted some years later, but after much controversy and agitation.

(8) George Frederick Street was the fourth son of Samuel Denny Street. He was born July 21st, 1787. Studied law in England; resided there for about ten years, from 1808 to 1818; returned to New Brunswick and was admitted to the Bar of that Province. He was married in England, March 26th, 1818, to Frances Maria Stratton, a daughter of Major Stratton, of the Royal Engineers. From this marriage there was issue one daughter and two sons, all of whom are deceased. The following dates are instructive in Mr. Street's public career. He was appointed Advocate-General in 1825, to a seat in the Executive Council in 1833, Solicitor-General in 1835, a member of the Legislative Council in 1839, and a Judge of the Supreme Court in 1846. He died at Malta in 1855.

CHAPTER XVII.

HON. LEMUEL ALLAN WILMOT.

The year 1809 witnessed some notable changes in the *personnel* of the Bench and Bar of New Brunswick. Jonathan Bliss, Attorney-General, and Ward Chipman, Solicitor-General, after holding their respective offices for more than 24 years, were appointed to the Bench, the former succeeding Chief Justice Ludlow, while the latter took the seat of Judge Upham, the last survivor of the first Bench. These changes left the administration of justice in the hands of the following: Jonathan Bliss, Chief Justice; John Saunders, Edward Winslow, Ward Chipman, Puisne Judges; Thomas Wetmore, Attorney-General; John Murray Bliss, Solicitor-General; Ward Chipman, Jun., Advocate-General. For the first time the offices of Attorney-General, Solicitor-General and Advocate-General were filled by New Brunswick law students.

On the 31st of January in this year—so memorable in the history of the Bench and Bar—Lemuel Allan Wilmot was born. His native place was Sunbury County, on the St. John river, the home of many of the Loyalist families of the province. His grandfather, Lemuel Wilmot, was a captain in Col. Beverley Robinson's Loyal American Regiment during the American Revolution, and at the peace in 1783 came to New Brunswick. He died in 1814 at his residence in Sunbury County. His son William married a daughter of the Hon. Daniel Bliss, of Belmont, one of the Executive Council at the organization of the province. Mrs. Wilmot died when Lemuel Allan was less than two years old. William Wilmot was a good man and a zealous Baptist, filling at times the office of a local preacher. In the election of 1816 he was

returned one of the representatives for Sunbury County. Up to this time no attempt had been made to restrict the choice of the electors by preventing them from sending clergymen, or ministers of any religious body, as their representatives to the legislature; but the election of Mr. Wilmot, "a Baptist preacher," seems to have proved distasteful to the legislators of the day, and, in consequence, at the session held in the year 1818, an Act was passed which provided:

That from and after the passing of this Act, no person shall be capable of being elected a member to serve in the General Assembly, or of sitting or voting therein, who shall be a Minister of the Church of England, or of the Church of Scotland, or a Minister, Priest, Ecclesiastic, or Teacher under any form or profession of religious faith or worship whatever.

That this Act shall not be in force until His Majesty's Royal approbation be therein had and received.

The passage of this Act aroused considerable feeling in the province, as is evident from correspondence which appeared in the newspapers at the time. It was introduced in the House of Assembly, read a first and second time, committed and passed in the course of a few hours, and the same day a message was received from the council that the bill had been agreed to. Nothing more was heard of the matter, however, (the Act having been reserved for the pleasure of His Majesty) until a few years later. In the general election, which took place in 1819, Mr. Wilmot failed of election. In 1823 Amos Perley, one of the members for Sunbury, died; and at the session in 1824 the clerk of the Crown attended with the writ and returns, which showed that William Wilmot had been duly elected to serve in the General Assembly in the room of the late Mr. Perley. For the second time Mr. Wilmot was refused permission to sit and vote in the General Assembly (1).

Young as Lemuel Allan Wilmot was, this action on the part of the majority of the House of Assembly

not unnaturally aroused in him a spirit of resentment toward the class from which the legislation that excluded his father emanated. Clearly the matter was largely due to religious prejudice, although there were undoubtedly some who believed it was not desirable that ministers should be legislators, and voted accordingly.

William Wilmot was one of the lumbering firm of Peters & Wilmot, which for several years carried on extensive operations on the upper St. John. In connection with the business Lemuel Allan Wilmot, when quite young, spent some time among the French people of Madawaska, and there acquired a sufficient knowledge of the language to converse fluently. His biographer, Dr. Lathern, has suggested that the vivacity of speech and animation of gesture that marked his public utterances may have had its origin in his sojourn at Madawaska.

The lumbering business, as was too often the case in those days, involved William Wilmot in financial ruin, but the change in his father's fortune served to stimulate in the son a resolute endeavor to develop those talents that might otherwise have lain dormant.

In a debate that occurred in the House of Assembly in 1846, on Parish Schools, L. A. Wilmot said that he felt strongly upon the subject, and would now relate an incident that had fallen under his observation. Some years since a gentleman living in the country, who had a family growing up around him, began to feel the great want of proper schools for the education of his children. After some consideration he resolved to move to Fredericton, where his children would receive the advantage of a proper education. He did so; his children went to school, and he embarked in commercial pursuits. His eldest son, having finished his education, was entered as a student at law; and the day his son was admitted a member of the Bar saw

his father stripped of all his earthly possessions. "That man," said Mr. Wilmot, "was my father, and that son, he who now addresses you!"

Lemuel Allan Wilmot received the principal part of his education at the Collegiate School in Fredericton, afterwards taking a partial course at the College. He studied law at the office of Charles S. Putnam (2), and was admitted to the Bar in 1832.

In early life Wilmot was a favorite with his companions on account of his genial nature and vivacity. He was a leader in athletic sports, and easily excelled his competitors in running, leaping, shooting, singing, key-bugling and other exercises and amusements. One who knew him well at the time says: "I have seen him lay down his bag of law books, ask for a marble, and, knocking the centre alley from the ring, move off laughing." He was a lover of military exercises, and when quite young commanded a rifle company. He was afterwards captain of a fine grenadier company, uniformed like the British regulars with scarlet coats and bear skins. Later he commanded a troop of cavalry, and at the time of the dispute with the State of Maine over the ownership of the territory of the Aroostook region in 1838-39, commonly known as the Aroostook War, his troopers were employed as *videttes*, stationed at various intervals along the upper St. John to carry dispatches. When King Edward VII. visited the province as Prince of Wales in 1860, Lemuel Allan Wilmot commanded the troop of dragoons detailed as his escort. In the first military camp organized in the province by Lieut.-Governor Sir Arthur H. Gordon, in July, 1865, for twenty-eight days' drill at Fredericton, the first battalion was commanded by L. A. Wilmot. At the close of the camp he was mentioned in the General Orders in the following handsome terms:

Lieut.-Colonel Wilmot has shown himself, as on all previous occasions, zealous and indefatigable, and the example afforded by the conduct of one holding his high position and influence cannot fail to be productive of the best results.

The Christian name of Mr. Wilmot was originally Allan Lemuel, but on his admission to the Bar he changed it to Lemuel Allan, in order that the initial letters, L. A. W., might be in keeping with his profession. His gifts as an orator, and the magnetism of a graceful and attractive personal presence, soon won for him a high reputation as a pleader and his influence with juries, is said to have been remarkable. The writer of a brief sketch in a Boston paper said of him:

As an advocate at the Bar, few in any country could surpass him. The Court was full when it was known that Wilmot had a case. He scented a fraud or falsehood from afar. He heard its gentlest motions. He pursued it like an Indian hunter. If it burrowed, he dragged it forth, and held it up wriggling to the gaze and scorn of the Court. When he drew his tall form up before a jury, fixed his black piercing eyes upon them, moved those rapid hands and pointed that pistol finger, and poured out his argument and made his appeal with glowing, burning eloquence, few jurors could resist him.

The late George E. Fenety (3), who greatly admired Mr. Wilmot, and warmly sympathized with him in his fight for responsible government, adds his meed of praise with regard to his powers of oratory in the following terms:

The writer, in his fifty years peregrinations, has listened to many of the great orators of England and America, and for holding an audience spell-bound and breathless, moving them at will to tears or to mirth, Wilmot was matchless. A fine resonant voice, commanding figure, and piercing eyes, were prominent among his natural gifts. He was equal to any demand made upon him, whether as a political debater, a platform lecturer, or a Sunday-school speaker. He was a man of strong impulses, emotional, impulsive, nervous—not

at all times, even in critical moments, reliable in judgment—if at times violent in speech, it was like smoke from the fire, for his heart was in its place, and his kindliness of disposition ever manifest.

L. A. Wilmot was made Queen's Counsel in 1838. He received the degree of D. C. L. from the University of New Brunswick in 1863, when he was visitor of that institution as Lieutenant-Governor of the province. We must now turn our attention to his political career.

Shortly after his admission to the Bar, in 1832, the pathway to political life opened to the young lawyer. He became a contributor to the press on leading political questions. Until the year 1833 the *Royal Gazette* was the only newspaper published at Fredericton; up to 1815 it was printed at St. John. On the death of Jacob Mott, King's Printer, George K. Lugin was appointed his successor, and removed to Fredericton, where the paper was thenceforth issued. Mr. Lugin, in 1822, sold the paper to John Simpson, and went to live in the country. He returned to Fredericton in 1833 to publish the *Watchman*, a weekly newspaper, which had as its motto:

CONSTITUTIONAL RIGHTS.

Official oppression shall be exposed, and all the secret springs of government shall be closely inspected. A Watch shall be kept upon Public men, and Public measures shall receive censure or commendation as they may deserve, and the latter shall be fearlessly and independently dealt with.

To the *Watchman* Mr. Wilmot was a leading contributor, but his advanced views with regard to reform frightened the proprietor, and he ceased to write for its columns. The paper lived for only a short time. Mr. Lugin died on the 12th of May, 1835, and with him the *Watchman*.

The event that opened the way for Mr. Wilmot's entering the House of Assembly is to be found in the following paragraph :

Died at Fredericton, 27 March, 1834, William Taylor, Esq., member of the House of Assembly for York. In him society loses one of its most worthy and useful ornaments. He was a most kind and affectionate husband, and tender and indulgent parent. The memory of the just is blessed, and that of the departed will be long and sincerely cherished by all who had the opportunity to experience and who could appreciate his worth.

At the solicitation of his friends, L. A. Wilmot announced himself a candidate for the vacant seat in the legislature, and issued the following card to the electors of the County of York :

GENTLEMEN,—

As you are now called upon to choose a Representative to supply the vacancy caused by the lamented death of William Taylor, Esquire, I have to announce my intention of appearing before you on the 16th instant as a candidate for your suffrages.

The duty of a Representative is becoming more and more arduous and important as we rise in the scale of political worth. Every branch of our Trade and Commerce is growing with rapidity, which bespeaks the genius of an enterprising people. To encourage and protect our Trade, foreign and domestic—to arouse and bring into action the slumbering, because uncalled for, energies of many of our fellow countrymen, and to direct our enterprise into those channels which will bear us to general prosperity—these should be peculiarly the objects of our Legislature. But while these things should never be lost sight of by your Representatives, they should watch with parental jealousy over the operation of those laws which more immediately affect your private rights. Here it is where the Lawyer is better qualified from his profession to discuss what requires amendment. Every man in the country is concerned in our Judicial Institutions. The way to the redress of our private grievances may be rugged and forbidding—forbidding, however, it should not be, justice should always be easily approached, while she kindly and invitingly holds out redress to the injured. It

may be, in many cases, preferable to endure the wrong than apply the remedy. Whether this is the case with us, they best know whose every-day business it is to conduct applicants for redress to the Throne of Justice.

Gentlemen, I am ready and willing to serve you; your interests are truly mine; I feel attached to the country as my father-land, and to the people as my neighbours and fellow-citizens, and if you should repose that confidence in me which would induce you to elect me as your Representative, while I live I shall not forget or neglect your interests.

I have the honor to be, *Gentlemen*,

Your very obedient, and humble servant,

LEMUEL ALLAN WILMOT.

Fredericton, 2nd June, 1834.

Wilmot was soon firmly established in the affections of the democracy of the day. He was, however, by no means *persona grata* in the eyes of the aristocracy. On the day of nomination he was escorted to the hustings by Harry Jones and Charles McPherson, where from a platform in front of the old market house he made a speech of such power as to sweep down all opposition and return him, by acclamation, the first unopposed representative for the County of York. A young scion of the ruling order, taking umbrage at some of Wilmot's utterances on the nomination day, rode up to the crowd and demanded that they should pull him down. The only effect was to draw from the candidate such a burst of indignant eloquence, denunciation and patriotic appeal as aroused the crowd to a high pitch of enthusiasm, and stamped Wilmot from that day as a champion of the people's rights. The sequel is thus briefly described in the columns of the *Watchman*:

A poll was opened at the Court House in Fredericton, 16th June (1834), for the election of a member in the room of the late William Taylor, Esq. John A. Beckwith (4) proposed L. A. Wilmot, who was returned by acclamation. This is the first time an election has terminated without a contest in York. Mr. Wilmot addressed the people twice with elo-

quence and effect. Time forbids any further notice at present; we have only to add our cordial acquiescence, and our ardent hope that Mr. Wilmot may prove himself fully worthy of that exalted honor which has been conferred upon him.

The year of Mr. Wilmot's election was the fiftieth anniversary of the organization of government and appointment of the first Bench of Judges for the province. It was also the year in which Chief Justice Saunders and Judge Bliss died. At the session of the legislature, held earlier in the year, the representation of the House was increased by the formation of three new counties—Carleton, Kent and Gloucester, and this was followed by a dissolution of the House of Assembly. This had the effect of bringing Mr. Wilmot again before the constituency of York, not having taken his seat. At the end of fifteen days polling the following were found to have been elected: John Allen, L. A. Wilmot, James Taylor and Jedediah Slason.

In the new House the Bar was represented by William End, E. B. Chandler, John W. Weldon, George Stilman Hill (5), John Ambrose Street and L. A. Wilmot. Although not a member of the government, Mr. End was the leader in the House. The opposition was led by Charles Simonds, who took his seat for the first time in 1821.

When L. A. Wilmot took his seat in the legislature, at the session of 1835, he was in his twenty-sixth year. Early in the session the Governor, Sir Archibald Campbell, informed the House that he had received instructions from His Majesty's Government to resume the collection of Quit Rents. Mr. Wilmot addressed the House in opposition to the proposal, and was followed by Hon. Charles Simonds, who said:

The honourable and learned member for York had anticipated almost everything he had to say, and had spoken in much better language than he would pretend to; and he sincerely congratulated the Province, and the County of York

in particular, in having selected as a representative a gentleman so willing and so able to protect the interests of the people.

A most unfortunate situation developed at the close of the session, as will be seen in the following extract from the address of the Lieutenant-Governor :

Mr. President and Honourable Gentlemen of the Legislative Council.

Mr. Speaker and Gentlemen of the House of Assembly.

Having given my assent to all the bills you have passed, I have only to express my extreme regret that I am under the necessity of closing the session without there being any appropriations for the year.

On whom does the responsibility rest for the failure to pass the appropriation bills?

To answer this question, it may be stated that upon the separation of the Executive from the Legislative Council in 1833, His Majesty's Government recommended that the members of the Legislative Council should be paid the same amount for their attendance and services as the members of the House of Assembly. At the session now closed the Council rejected the resolution sent up to them from the lower House touching the allowance for its members, on the ground that there was no mention therein of a similar allowance to the members of the Council. The House of Assembly then proceeded to include the pay for its members in the General Appropriation Bill. The Council thereupon rejected the bill, leaving the members of the Assembly without their usual remuneration, and, what was far more serious, leaving the country without the usual appropriation for public services. The Council now had to bear the brunt of public opinion, which was very strong. Public meetings were held and petitions to the Governor followed. A special session of the legislature was held on the

15th of June, 1835, and Sir Archibald Campbell, in his opening address, said :

At the close of the late session of the General Assembly I had to express to you the regret I felt at the loss of the appropriations. This feeling has been very much increased by the petitions I have received from many of the counties, expressing the inconvenience and distress likely to arise from this unhappy circumstance, which, if not remedied, will create difficulty and embarrassment in every branch of the Public Service, and cannot fail to prove particularly discouraging to the poorer classes, who derive benefit from the expenditure of the public monies which the bounty of the Legislature is accustomed annually to distribute throughout the country.

In order to restore harmony and effect a solution of the difficulty, the members of the Legislative Council receded from their claim for pay.

The growing influence of L. A. Wilmot is seen in the fact that he was sent the following year, with William Crane, as a delegate to London to lay before the Colonial Office grievances under which the province labored. So successful was their mission, and so kindly their reception by the Colonial Secretary, that the House resolved to mark its appreciation of the Secretary's services by asking him to sit for a full length portrait. In due time the portrait arrived, and the *Fredericton Sentinel* of February 22, 1840, says: "The picture of Lord Glenelg has just been placed over the Speaker's Chair, and is a superior work of art." (7.)

The death of William IV. in 1837 was, as usual, followed by a dissolution of the House of Assembly. At the ensuing election the following members were chosen for the County of York, viz: L. A. Wilmot, John Allen, James Taylor and Charles Fisher—the latter for the first time. As Mr. Wilmot was still on the sunny side of thirty his success in the world of politics must be regarded as phenomenal. The appreciation on the part of the House of the services

rendered by Mr. Wilmot in connection with the recent delegation to England and the magnanimity of his colleague are to be seen in the following resolution adopted by the House. It is a good specimen of the verbiage that marked old-time legislation :

Whereas, The House in 1836 considered it necessary to depute two of its members to England to bring under the consideration of His Majesty's Government certain highly important matters, in the speedy settlement of which this Province was deeply interested;

And whereas, A second deputation, also deemed proper in consequence of a difference having taken place between the two branches of the Legislature and the then Lieutenant-Governor, in the final adjustment of concessions made by His Majesty's Government, and ordered to be carried into effect by legislative enactment in this Province;

And whereas, One of the said deputation, the Hon. William Crane (8), has declined receiving any compensation for his valuable services in bringing to a successful issue the various subjects given the said deputation in charge;

And whereas, L. A. Wilmot, the associate of the said Hon. William Crane, has been put to much loss in his professional business, and it is therefore considered reasonable, just and proper that some remuneration should be made to him, and particularly as he obeyed the directions of this House upon the implied understanding that some compensation should be afforded him for making so great a sacrifice;

Therefore resolved, That there be granted to the said L. A. Wilmot, in addition to the sum of £288 17s. 6d. now in his hands, unexpended monies voted for the expenses of the deputation of 1836, the sum of £300 for his services as one of the deputation in 1837 to England.

Under the arrangement effected with the British Government by Messrs. Wilmot and Crane, the casual and territorial revenues, amounting to £150,000 sterling, were transferred to the province in consideration of the legislature undertaking to provide for a civil list of £14,500 currency annually for the payment of certain salaries chargeable to that fund. The manner

in which the money to provide for the civil list of the province was to be appropriated was specified in the dispatch of Lord Glenelg:

Salary of the Lieutenant-Governor.....	£3,500
Chief Justice.. . . .	950
Three Puisne Judges.. . . .	1,950
Attorney-General.. . . .	550
Solicitor-General.. . . .	200
Private Secretary.. . . .	200
Commissioner of Crown Lands.. . . .	1,750
Establishment of Crown Lands.. . . .	900
Provincial Secretary.....	1,430
Auditor	300
Receiver-General.. . . .	300
Scotch Minister.. . . .	50
Emigrant Agent at St. John.. . . .	100
Annuity to late Surveyor-General.. . . .	150
College.. . . .	1,000
Indians.. . . .	54
Total in sterling money.. . . .	£13,393

Sir Archibald Campbell had a rooted aversion to all popular reforms, and he did not view with complacency the proposal to transfer the control of the casual and territorial revenues to the Provincial Legislature. He did what he could to thwart the project, and his uncompromising hostility compelled the sending of Messrs. Crane and Wilmot to England a second time. Their departure from Fredericton was the signal for a popular demonstration. Rather than submit to the inevitable, Sir Archibald Campbell tendered his resignation, and Sir John Harvey, a man of very different spirit, was appointed to succeed him as Lieutenant-Governor. The civil list bill passed the legislature and received the Royal assent, becoming law on July 17th, 1837, and from that time the province has exercised control of the revenues which it derives from its Crown Lands and similar sources, and, whether wisely expended or not, the people have

at least the satisfaction of knowing that the money is appropriated by their own representatives, and by a government which is responsible to them for its actions.

One of the pleasing incidents in connection with Mr. Wilmot's first visit to England was his presentation to King William IV. through the good offices of the Colonial Minister, Lord Glenelg. On this occasion he thanked the King for his generous consideration of colonial interests.

During Sir John Harvey's governorship there were stirring times on the River St. John, in consequence of the controversy with the State of Maine concerning the ownership of the territory of the Aroostook region. It was largely through the tact and good judgment of Sir John Harvey that hostilities were averted.

L. A. Wilmot was a staunch upholder of the rights of the province at this time of excitement, not only in the legislature, but at the head of his troopers, who patrolled the banks of the River St. John.

As already pointed out in these pages, the boundary difficulty had its origin in the gross incapacity of Oswald, the British commissioner who negotiated the treaty of peace with the United States in 1783. The area of the territory in dispute was 12,029 square miles. The award of the King of the Netherlands, made at the Hague on the 10th of January, 1831, failed to settle the difficulty, the United States declining to accept it, on the ground that it was insufficient and unfair. Under the much abused Ashburton Treaty, eleven years later, Great Britain received 893 square miles, or 571,520 acres, more than the King of the Netherlands had awarded. When Lord Ashburton took hold of the boundary question it was past remedy, but he undoubtedly made the best of it, and is entitled, so far as his share in the matter goes, to praise and not to blame. A great many people who know nothing of the

merits of the controversy have been unsparing in their denunciation of the Ashburton Treaty as a disgraceful surrender of the interests of New Brunswick. It was in reality a very prudent settlement of a serious and dangerous difficulty.

In 1844 L. A. Wilmot became a member of the Executive Council, but his connection therewith was short, owing to a cause none could foresee.

On the death of Hon. William F. Odell (9), Provincial Secretary, on the 25th December, 1844, Sir William Colebrooke appointed his son-in-law, Alfred Reade (10), who was a native of England and a stranger to the province, to the vacant office, without consulting his executive. This was followed by their resignation. To the appointment of Mr. Reade as Provincial Secretary, Mr. Wilmot took three exceptions: 1. The Council should have been consulted. 2. Mr. Reade had no claims to the office, having rendered no public service; moreover, he was a stranger in the province. 3. The time had come when the Provincial Secretary should be a member of the government with a seat in the legislature, the tenure of office dependent on possessing the confidence of the country.

Sir William Colebrooke, finding the appointment was not approved by the Home Government, was greatly crestfallen. Mr. Reade was obliged to resign, and Hon. John Simcoe Saunders, of the Legislative Council, took the office. This was followed by the return to office of Hugh Johnston, E. B. Chandler and R. L. Hazen.

Under responsible government no such appointment as that of Mr. Reade could have happened, and the country would have been saved a world of turmoil and the display of an amount of acrimony against the Queen's representative probably without precedent in our parliamentary history.

In the year 1845 Mr. Wilmot brought forward a bill to amend the charter of King's College, Fredericton. Hitherto the college had been regarded as a distinctly Church of England institution, and it was now proposed that, in view of the fact that it was in a large measure maintained by public money, there should be nothing in its government or control to excite the jealousy or offend the religious scruples of any Christian denomination. The first proposed amendment to the charter was to remove the Lord Bishop of the Diocese from the office of Visitor and substitute the Lieutenant-Governor. Also that the Chief Justice should be Chancellor in the place of the Lieutenant-Governor, and that the Archdeacon of the Diocese should no longer be *ex-officio* the President of the college, but that the President should be appointed by the Queen, or her representative. The second amendment fixed the members of the college council at 15, and showed what officials should be included. The third amendment abolished the rule that only graduates of the college should be competent to take part in its management, and provided also that thereafter no religious test should be required of any member of the College Council, that the appointment to professorships should lie with the Lieutenant-Governor, and that those appointed need not necessarily be members of the Church of England. The chapel services were to be conducted as before, according to the order, rites and ceremonies of the Church of England, and the professor of theology was required to be a clergyman of that church.

The bill was carried, after a lengthy and stormy debate, and by the amendments it contained the college was shorn of most of its denominational features. In the course of the debate Mr. Wilmot said that £47,000 had already been expended on the college, and he did not wish to see it thrown away. (This in

answer to those who clamored for the abolition of the college). He would be sorry, he said, to see the institution destroyed, but would do his best to build it up and render it more useful. It may here be observed that Mr. Wilmot throughout his life continued to manifest the greatest interest in the college. After his death his widow founded the Wilmot Memorial Scholarship, worth \$100 per annum, and tenable for three years.

On the 14th of April, 1846, at the close of the session, Mr. Wilmot announced his decision to retire from public life. It was not his intention, he said, to again offer as a candidate for the House.

His seat in his first election, in 1834, was obtained by acclamation, but subsequently, in five general elections he had ample experience of the turmoil of heated political campaigns. The election contests in those days of open voting were sharp and bitter. "In several of Wilmot's elections," writes the late Col. Baird, "I have seen tumults suppressed where sticks were freely used, and a passage-way for voters had to be kept open through the crowd by the military." The poll was in those days kept open in various parts of the county from day to day for more than a week, and in a close contest the agitation which swept over the country grew daily in intensity, and not infrequently ended in turbulence and riot.

However, Wilmot was not suffered to retire to private life. It was felt that his talents were needed in the legislature, and, although he took no personal part in the ensuing general election, he was, by the enthusiasm and organization of his friends and party, triumphantly returned.

The circumstances that led to Mr. Wilmot's accepting the office of Attorney-General must now be considered. Hon. Charles J. Peters, the Attorney-General of the province for twenty years, died on the 3rd

of February, 1848, the last to hold office under a life tenure. His associates in the government were Hon. George Shore, Hon. E. B. Chandler, Hon. Thomas Baillie, Hon. George S. Hill, Hon. Hugh Johnston, Hon. Robert L. Hazen and Hon. Alexander Rankin. In connection with the decease of the Attorney-General, Sir William Colebrooke wrote a very interesting letter to Earl Gray, which has already appeared in these pages, but to which the attention of the reader is again directed in this connection (see *ante*, pp. 348-350). In this letter the Lieutenant-Governor stated that in his opinion Mr. W. B. Kinnear had established a just claim to succeed to the office of Attorney-General, the prospect of which had induced him to take an office of inferior emolument at Fredericton and to relinquish his professional business in St. John. Mr. Kinnear was fully aware of the views of the Colonial Secretary in regard to the principles of government likely to obtain in the province, and fully prepared to take part in any government constituted under proper guarantees, and to maintain his position as a member of the Executive Council. Assuming that Mr. Kinnear would receive the position of Attorney-General, Sir William Colebrooke said that he would be glad if Mr. John Ambrose Street (II) were appointed to the vacancy which would then arise in the office of Solicitor-General.

Unfortunately for Mr. Kinnear's political prospects Sir William Colebrooke left the province, and with Sir Edmund Head's entry upon the duties of Lieutenant-Governor, L. A. Wilmot and Charles Fisher appear on the scene. It was the wish of these latter gentlemen that the Hon. E. B. Chandler should fill the first vacancy on the Bench. This will appear from the letters which follow :

(1)

FREDERICTON, 16th May, 1848.

MY DEAR CHANDLER,—

I have just returned from Government House, having heard you wrote Sir Edmund Head, and his answer to you respecting Kinnear. I am really sorry that the present state of things has arisen, but, under all the circumstances, I would advise that the matter be closed up as proposed by Sir Edmund. Your claims for the Bench are undoubted. Fisher and myself will be your friends, and we have but one opinion on the subject. I really hope we will get into shape without a question involving persons.

In haste,

Very truly yours,

L. A. WILMOT.

(2)

MY DEAR CHANDLER,—

Wilmot has just called and showed me his letter to you. I have seen Sir Edmund, and I stated to him most distinctly, that in any state of things I have always understood that in any arrangement to be made that whoever should be the crown officers, you were to have the first vacancy on the Bench, if you wished, and tho' I have no authority for saying this, except between ourselves, I think I may safely say the understanding with the Governor fully amounted to it. I should be very sorry to have the proposed arrangement broken on a question of the kind, and I am convinced the delay is leading to embarrassment and causing annoyance, as people will talk and become excited, and no one can control them, and there are enough who would be gratified at the smallest difficulty.

Yours faithfully,

CHARLES FISHER.

The question arises, What was the cause of the delay that aroused apprehension in Mr. Fisher's mind and which eventually kept Mr. Chandler from taking his seat upon the Bench? To understand this we shall have to follow the course of events, as they will be disclosed a little later.

Eight days after the above letters were penned the *Royal Gazette* announced the appointment of Hon.

L. A. Wilmot as Attorney-General, in place of the Hon. Charles J. Peters, deceased; and also the appointment of John R. Partelow, Charles Fisher and William B. Kinnear as members of the Executive Council in the room of George Shore, Hugh Johnston and Thomas Baillie. To no one would the appointment of L. A. Wilmot as Attorney-General come as a greater surprise than to Sir William Colebrooke.

Shortly before Mr. Wilmot became Attorney-General, the Barristers' Society was incorporated, for the purpose of establishing and securing good order and good conduct on the part of the members, and of securing to the province and profession a learned and honorable body, and of procuring and maintaining a Library for the use of the Society. The following were Benchers: L. A. Wilmot, Attorney-General; William B. Kinnear, Solicitor-General; Robert L. Hazen, Robertson Bayard, Geo. J. Dibblee, Geo. J. Thomson, John W. Weldon, James W. Chandler, David S. Kerr, Theophilus Desbrisay, Henry B. Robinson, Secretary-Treasurer. At this time the following were Queen's Counsel: John Ambrose Street, Edward B. Chandler, John W. Weldon, Robert L. Hazen and William End.

It is not necessary to enter upon the vexed question as to whether the entry of Wilmot and Fisher into the government in 1848 was ill-advised, as has been claimed by many students of New Brunswick political history. Mr. Fenety, in his political notes, considers it to have been "the great political mistake of their lives." At all events, the coalition did not work harmoniously.

As a representative of the province, Attorney-General Wilmot, in 1850, attended the International Railway convention held at Portland, Maine. There were many able and eloquent speeches at this great railroad convention, but, by common consent, to Wilmot was awarded the palm.

The *Boston Journal*, years afterwards, referred to the splendid address which he made on this occasion, holding his audience spell-bound by the brilliancy and fervor of his eloquence as he depicted the moral, social and material interests which would be promoted by the contemplated work. His oratory was of the imaginative and impassioned type, accompanied by dramatic action and a voice of matchless power and wonderful expression. Reporters are said to have dropped their pencils and to have joined in the plaudits of the dense mass of people, who were in a very frenzy of excitement and enthusiasm.

In the provincial general election held this year the County of York gave Attorney-General Wilmot the last place on the poll, while Charles Fisher, another member of the government, was left out altogetehr.

The state of the poll at the close was as follows :

James Taylor.....	1,094
George L. Hatheway ..	916
John Pickard.....	749
L. A. Wilmot..	600
David Shank Kerr...	532
Charles Fisher ..	416
J. Kilburn...	385
John Allen..	304

This was certainly disappointing to one who had given sixteen of the best years of his life to the service of the County of York. In the light of these figures, who would be likely to refuse a seat on the Bench, the common ambition of the leaders of the Bar?

A very curious situation now developed.

From the day Sir Edmund Head assumed the governorship, the impending resignation of Chief Justice Chipman was quite an important factor in political circles. The Chief Justice would gladly have retired at an earlier period, as he was unable to go the circuits by reason of bodily infirmity. On the

17th October, 1850, he placed his resignation in the hands of the Lieutenant-Governor, to take effect at the close of the year. It appears from the correspondence of Sir Edmund Head with the Colonial office, that the Chief Justice desired that one of the Justices on the Bench should succeed to his office. With this Sir Edmund Head was in full accord. He wrote on 26th August, 1850, to Earl Gray :

In a private conversation at St. John, Chief Justice Chipman intimated to me his intention of resigning his seat on the Bench at the end of the year. I have arranged with him that the formal resignation will be tendered at the moment when it may be most convenient to receive it, and I think myself fortunate in being on such terms with the judges as enables me to consult the public interest in the matter. . . . According to the ordinary notions in England the Attorney-General might be supposed to have a claim on the Chief Justiceship. I conceive, however, that the present Attorney-General is a young man for the position, and one whose principal ambition has been, and is, more of a political character. I believe, moreover, he would himself acknowledge Mr. Chandler's claim to a seat on the Bench to be at least equal to his own.

Sir Edmund Head felt that the time had come when the resignation of the Chief Justice could be placed in his hands, and on the 5th of November he wrote Earl Gray :

I have received from Mr. Chipman his resignation of the Chief Justiceship, to take effect at the end of the current year. On the 25th of October I laid the resignation before my Executive Council, with a request for their advice upon the vacancy. I took special care to avoid pledging myself to the ultimate adoption of their opinion, whatever it might be, inasmuch as I conceive I am bound to submit to your Lordship what I consider to be the best course for the colony and for His Majesty's service.

The Council, after due consideration, recommended that it was not expedient to appoint any person to the Chief Justiceship, and that such a revision of the

Judiciary was desirable as to secure an efficient discharge of the judicial duties by three Judges of the Supreme Court with the appointment of the Master of the Rolls to a seat on the Bench. The recommendation of the Council was signed by E. B. Chandler, L. A. Wilmot, George S. Hill, R. L. Hazen, D. Hanington and John R. Partelow.

The government, being in some sense a coalition, were unwilling to lose Attorney General Wilmot as there was no representative of his party in the House to replace him. There were evidently some jealousies too on the part of the older lawyers at the prospect of his elevation over their heads. After he had turned the matter over in his mind the Attorney General called on the Lieutenant Governor and read a letter he had written to his colleagues withdrawing his name from their recommendation. Two things would have followed the adoption of the recommendation, first, the elevation of one of the Puisne Judges to the Chief Justiceship; secondly, the remaining of the Attorney General in office.

Sir Edmund Head wrote to Earl Gray as follows:—

In the absence of any advice from my council, I think the best course is to offer the Chief Justiceship to the senior Judge, who is fully qualified for it, and is desirous of accepting even at a loss of income. If your Lordship thinks right to fill up the Puisne Judgeship, which would be vacated by Judge Carter, there are three names which I should desire to submit to Her Majesty's consideration: the Hon. E. B. Chandler, Hon. L. A. Wilmot and the Hon. William B. Kinnear. It might perhaps be supposed that Mr. Wilmot had a special claim to the Chief Justiceship, and had the Council unanimously recommended such an appointment, there would be much to be said in its favor. It should be added that Lord Stanley, in authorizing Sir William Colebrooke to appoint Judge Street, especially cautioned the Governor that Attorney-General Peters was not to look upon his claims to the Chief Justiceship as something which was to follow necessarily on a vacancy. Accordingly I am not, under existing circum-

stances, prepared to recommend that the Chief Justiceship be given to Mr. Wilmot rather than to Mr. Justice Carter.

As regards Mr. Chandler, for long I know he has desired a Judgeship, but I can now inform your Lordship, on his own authority, that he would decline it.

I come next to Hon. William B. Kinnear, the present Solicitor-General. I am not, however, prepared to recommend that a Judgeship should be offered to him until the Attorney-General has had the option of accepting it. In the event of Mr. Wilmot declining a Puisne Judgeship, Mr. Kinnear ought certainly, in my opinion, to have the next offer.

It is stated on pretty good authority that Sir Edmund Head had no intention, in the first instance, of recommending Mr. Wilmot for a Judgeship. Wilmot, it seems, felt out of his element in the coalition formed with those whose old associations were entirely with the "family compact," and whose resolute opponent he had been for so many years. He therefore wished to retire. The way seemed open for him to go upon the Bench. But his associates were not willing to part with him. His presence in the government greatly strengthened them in the House and in the country, and served in a measure to disarm criticism on the part of the reformers. The Governor was disposed to side with the majority of the Council, and to decline to recommend Mr. Wilmot for a seat on the Bench. He changed his mind, however, when the Attorney-General produced a letter, written by his old friend Lord Glenelg, Colonial Secretary at the time of his visit to England in 1836, stating that it was his desire, should anything occur in New Brunswick calculated to promote the interests of Mr. Wilmot, that the Lieutenant-Governor for the time being should act accordingly. So it would seem that on this occasion the members of the old family compact party, who usually courted the interference of Downing Street, were hoist with their own petard.

On the 3rd December, 1850, Earl Gray wrote in reply to Sir Edmund Head:

I have determined to follow the course which you have suggested, and have advised Her Majesty to confer the office of Chief Justice on Mr. Carter. You are further instructed to offer the vacant Puisne Judgeship to Attorney-General Wilmot, and, should he decline it, to Solicitor-General Kinnear.

The acceptance by Mr. Wilmot in January, 1851, of a Puisne Judgeship, was regarded by many of his political friends and admirers as a mistake.

The late Geo. E. Fenety says, in his Political Notes:

"A great luminary set in semi-darkness on the day that Mr. Wilmot left the Forum for the Bench. He was the light of the House for sixteen years, the centre from whence radiated most of the sparkling gems in the political firmament. It was at a time of life (comparatively a young man) and at a period when talents such as his were mostly wanted by his party and his country."

The office of Attorney-General was given to Hon. John Ambrose Street, at that time a member of the Assembly for the County of Northumberland. It is to the credit of the Hon. L. A. Wilmot that he did not attempt to obtain precedence of gentlemen of the high legal attainments of Sir James Carter, Hon. Robert Parker and George Frederick Street—the two former sixteen years on the Bench—and was content to take the position of junior Puisne Judge. This was not the case with Ward Chipman and others who stepped at once from the office of Attorney-General to that of Chief Justice.

As a Judge of the Supreme Court, L. A. Wilmot was largely withdrawn from the public gaze, but in his appointment to the Bench the ermine was worn with dignity, grace and unsullied purity. It is claimed that Judge Wilmot never really gave the strength of his mind to law, or really cared particularly for the work of that profession. Be this as it may, he presided at the courts in a manner worthy of the

reputation of a Bench whose members were by common consent admitted to be honorable high-minded men, and who by their ability and sterling integrity gave to the Supreme Court of the province a character which it may well be the ambition of their successors, to the best of their ability, to maintain. The early Judges of New Brunswick were honored in their generation and were leaders in their time. Spotless each received the ermine; spotless each laid it down; their motto through life the old historic one, "The Bible and the Crown."

During the seventeen years he filled the position of a Judge of the Supreme Court, Hon. L. A. Wilmot occasionally lectured on subjects of literary and patriotic interest. In 1856 he lectured on the Crimean War and a year or so later on the Sepoy Mutiny in India. In 1858-9 he gave a series of Lyceum addresses in St. John, which drew unprecedented audiences and aroused great general interest. From this time onward he was much sought for as a public speaker and was always glad to respond. It seemed as if the fire, force and spontaneity of his platform utterances were to him a refreshing change from the judicial attitude of the Bench. The St. John Globe, in 1860, thus speaks of his style of oratory: -

"The Judge is all action. The listener feels his heart vibrating like a reed in the wind before his wonderful and powerful gesticulation. The oratory is that of both intellect and body; the whole man is brought into action. Does he get off a denunciation? You read it in his countenance before the eloquent words have leaped like fire from his lips."

The Judge when at his best was a versatile and brilliant conversationalist. He had a love for social intercourse and was by nature one of the kindest of men. He was always thoroughly democratic in his instincts. The beautiful grounds that surrounded his residence, "Evelyn Grove"—at that time probably the finest in the province—were freely open to visitors

and citizens of all classes. The Judge was a great lover of flowers. His biographer, Dr. Lathern, gives a good description of L. A. Wilmot in his garden which is well worth reading. He liked to moralise, as he walked with his friends. When for example, his eyes chanced to fall upon the strawberry vine and he stopped in his walk to pluck the berry from its stem, he said:—

“What delicious fruit; close upon the surface! Are not the most essential truths easily accessible. The essential conditions of life, how simple they are; bread from bruised corn, and water from the mountain spring. Then, according to our inclination or capacity, research can be carried into distant domains. But the grand verities needed for the salvation of the human soul are upon the surface. The strawberries lie nearest to the little children.”

The Judge was a great lover of children, and was never more delighted than when surrounded by them. He kept his class in Sunday School even when he had become Lieutenant-Governor. He was also a lover of books, and the best current literature was always to be found upon his library table.

It is manifestly out of place to speak at length in these pages of L. A. Wilmot's Christian life and work as a devout member of the Methodist Church. Those who desire information on this head will find it in Dr. Lathern's biography.

After the confederation of the British American provinces into the Dominion of Canada, in 1867, the suggestion that Judge Wilmot should be offered the position of Lieutenant-Governor of New Brunswick met with general approval. There was some unaccountable delay in the matter, and it was not until a year after Confederation was itself an accomplished fact that the first native Governor of the provinces received the appointment by virtue of the following document:—

{ Great Seal
of
Canada. } (Signed) MONCK.

CANADA.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, &c. &c.

To the Honorable Lemuel Allan Wilmot, GREETING:

Whereas by an Act of the Parliament of Our United Kingdom of Great Britain and Ireland, passed in the thirtieth year of Our Reign, and intituled "An Act for the Union of Canada, Nova Scotia, and New Brunswick, and the government thereof, and for purposes connected therewith," it is in the fifty eighth section thereof enacted, that for each Province there shall be an officer styled "The Lieutenant Governor," appointed by Our Governor General in Council, by Instrument under the Great Seal of Canada: And it is by the fifty ninth section of the said Act enacted that a Lieutenant Governor shall hold office during the pleasure of the Governor General; but that any Lieutenant Governor appointed after the commencement of the first Session of the Parliament of Canada, shall not be removable within five years from his appointment, except for cause assigned, as in the said Act is mentioned:

And whereas such first Session of the Parliament of our Dominion of Canada commenced on the sixth day of November now last past;

And whereas we are desirous of appointing you, the said LEMUEL ALLAN WILMOT, under the provisions of the said Act above mentioned, to be Our Lieutenant Governor of Our said Province of New Brunswick;

Now KNOW YOU, that We, reposing especial trust and confidence in the prudence, courage, loyalty and integrity of you, the said LEMUEL ALLAN WILMOT, of Our especial grace, certain knowledge, and mere motion, have thought fit to constitute and appoint you, and, in accordance with the provisions of the said Act above mentioned, do hereby constitute and appoint you to be, during our pleasure, Our Lieutenant Governor of Our said Province of New Brunswick.

And we do hereby authorize and empower and require and command you in due manner to do and execute, in all things that shall belong to your said command and the trust we have

reposed in you, according to the several provisions and directions granted or appointed you by virtue of this Our Commission and of the said Act above mentioned, according to such instructions as are herewith given you, or which may, from time to time, be given to you, in respect of Our said Province of New Brunswick, under the Sign Manual of Our Governor General of Our said Dominion of Canada, or by Us through one of Our Privy Council of Canada, and according to such Laws as are or shall be in force within Our said Province of New Brunswick.

In Testimony Whereof, We have caused these Our Letters to be made Patent, and the Great Seal of Canada to be hereunto affixed: Witness, Our right trusty and well beloved cousin, the Right Honorable Charles Stanley, Viscount Monck, Baron Monck of Ballytramon, in the County of Wexford, in the Peerage of the United Kingdom of Great Britain and Ireland, Governor General of Canada, &c. &c. &c.

At Our Government House, in Our City of Ottawa, this fourteenth day of July, in the year of Our Lord one thousand eight hundred and sixty eight, and in the thirty second year of Our Reign.

By Command.

(Signed)

HECTOR L. LANGEVIN,

Secretary.

The appointment of Judge Wilmot to the office of Lieutenant-Governor marked a new era in the history of New Brunswick. On three several occasions Judges of the Supreme Court had acted as administrators of government under the title of President and Commander in Chief. Edward Winslow in 1808, Ward Chipman in 1823 and John Murray Bliss in 1824. Now, however, the day had come when a son of New Brunswick, no matter of what class or creed, might aspire to the high dignity of Lieutenant-Governor of his native province.

During his tenure of office Lieutenant-Governor Wilmot entertained at Government House, H. R. H. Prince Authur, Duke of Connaught; Baron and Lady Lisgar, the Earl and Countess of Dufferin and other

distinguished guests. A valuable ring, set with diamonds and emeralds, was presented by the Prince to Mrs. Wilmot, a fitting souvenir of his visit.

After the close of his five years tenure of office in 1873, the Lieutenant-Governor was appointed one of the commissioners to settle the Prince Edward Island land claims, and at the time of his death had been appointed the Dominion Arbiter to establish the boundary between Ontario and Manitoba.

The death of ex-Governor Wilmot came suddenly. On the afternoon of the 20th of May, 1878, he was driving in his carriage with Mrs. Wilmot, apparently in the enjoyment of his usual health, and in his calls on several friends seemed full of life and anecdote. On reaching his residence he complained of a severe pain near his heart, and had to be helped into the house, where he quietly passed away. He was buried in the beautiful cemetery in the suburbs of Fredericton overlooking the River St. John. The monument over his grave bears the following inscription:—

The Honorable
LEMUEL A. WILMOT, D. C. L.

Born 31st January, 1809.

Died 20th May, 1878.

"The mouth of the righteous speaketh wisdom;
The law of God is in his heart."

NOTES.

(1) In the early days of New Brunswick clergymen were not ineligible for membership in the Provincial Legislature. Rev. Walter Price was elected in 1802 one of the representatives of the County of York in the House of Assembly, as was Rev. Dr. John Agnew for the County of Sunbury in 1792. The Bishop of Nova Scotia was a member of the old Council of New Brunswick, although he never took

his seat in it but once. Rev. Jonathan Odell, our first Provincial Secretary, officiated occasionally in the churches at St. John and Fredericton after his appointment to office. Other offices of a civil nature, too, were filled by clergymen. Rev. Oliver Arnold, of Sussex, was a Justice of the Peace for the County of Kings, and Rev. George Pidgeon, of Fredericton, filled a like office in the County of York. On the other hand, clergymen and even judges of the Supreme Court were sometimes married by the civil magistrate (see Winslow Papers, p. 487, for examples). However, these cases were exceptional, and grew out of the exigencies of the times. It was in the election of 1816 that William Wilmot, with Elijah Miles as his colleague, was chosen to represent the County of Sunbury, and it is evident that the measure introduced in 1818 to prevent ministers from sitting in the legislature was aimed at him, because he was the only person whom it affected. The bill was not assented to by the Lieutenant-Governor, Major-General George Stracey Smyth, but was reserved for the pleasure of His Majesty, and nothing more was heard of it until 1822. Joseph Crandal, a Baptist preacher, elected for the County of Westmorland, was the first victim of the measure which had been directed against Mr. Wilmot. Mr. Crandal sat in the House of Assembly during the session of 1821 unmolested, but the following year, on motion of Hugh Johnston, a member for the City of St. John, a resolution was passed which, after reciting the terms of the Act referred to, declared that as Joseph Crandal was a minister or teacher according to the Baptist form or profession of religion, his seat should be declared vacant. This was accordingly done, and in the session of 1823 Malcolm Wilmot took the place of Mr. Crandal as representative for the County of Westmorland. In the meantime Amos Perley, one of the members for Sunbury, died, and a

new election had to be held, at which Mr. William Wilmot was again returned, but, on his attempting to take his seat in March, 1823, he was not allowed to do so. A new election for Sunbury was ordered; Mr. Wilmot was again chosen, and appeared to claim his seat on the 3rd of February, 1824. Peter Stubs, of Charlotte County, moved a resolution declaring Mr. Wilmot disqualified, whereupon Hon. Charles Simonds moved "the previous question," which was carried by 12 yeas to 11 nays. Mr. Simonds then moved to refer the matter to a special committee to investigate and report, but his motion was lost by a majority of one. The next day Mr. Stubs renewed his motion excluding Mr. Wilmot from the House, and it was carried without a division. The late George E. Fenety, in his *Life and Times of Hon. Joseph Howe*, p. 344, states that as Mr. Wilmot was leaving the House on this occasion he pointed to his son, Lemuel Allan, who was standing in the lobby—a boy of about fifteen—and said, "The time will come when that lad will see that justice is done." A new election was ordered for Sunbury, and Samuel Nevers elected in Mr. Wilmot's place. Mr. Crandal and Mr. Wilmot both seem to have concluded not to give themselves any further concern in regard to serving in the House of Assembly.

It may not be out of place in this connection to seek the reasons that animated the minds of the majority of the House of Assembly in dealing as they did in this matter. The late Rev. I. E. Bill, in his "*History of the Baptists*," shows clearly that in early days the denomination was closely connected with the "New Light" movement, which, under the fervid preaching of Henry Alline and his associates a century and more ago, so stirred the people of the rural districts of the Maritime Provinces. The extravagancies in which some of the New-Light teachers indulged, and the fact that many of their adherents belonged to the old

New England element of our population which had proved none too loyal to British institutions during the American Revolution, prejudiced the "New-Lights" strongly in the eyes of the ruling party in this province, the members of which were Tories, and for the most part Churchmen. For years the Baptists shared those prejudices, which, it must not be forgotten, were entertained by a large section of the people, as well as by their rulers. Early in the past century Lieut.-Governor Carleton sought the advice of Dr. Charles Inglis, Bishop of Nova Scotia, in regard to the advisability of granting licenses to New-Light preachers in the Province of New Brunswick. The reply of Bishop Inglis is interesting:

In Nova Scotia, where this Sect originated, and where New Lights abound, their attachment to Government lies under strong suspicions; and they have occasioned much disorder and distress in several Districts, by drawing people from their necessary occupations and promoting idleness and the neglect of business. The preachers are generally common laborers or mechanics, without any liberal education, or even tincture of learning—scarcely able to read a chapter in the English Bible. Being also of the very lowest orders of society they have no respectability of character to qualify them for a public and responsible position. They are considered as Fanatics, Enthusiasts and Levellers. * * * * *

If illiterate persons, without character or talents, and even vagrant strangers who are unknown in the province are authorized, under the sanction of Government, to go about and disseminate their wild doctrines, the most pernicious consequences may be justly apprehended. On this delicate subject your Excellency will doubtless take into consideration what is due to our gracious Sovereign and to the peace and order of the Province, as well as to the Established Church and the pure religion therein taught.

Continuing, Dr. Inglis suggests that when any person applies for a license to preach, some inquiry should be made into his literary attainments, moral character and political principles, and that no license should be granted when these are not satisfactory; also that the

oath of allegiance should be administered to every licensed preacher, and more to like effect. There is ample evidence to show that "enthusiasm," so called, was regarded with much suspicion on the part of our rulers in the olden time.

(2) Charles S. Putnam was a grandson of the Hon. James Putnam of the New Brunswick Bench. He studied in the office of Ward Chipman, Jun. His wife was a daughter of Rev. John Millidge, D. D., rector of Annapolis, N. S., granddaughter of James Simonds. From 1825 to his death, in 1837, Mr. Putnam lived in Fredericton, and filled the office of Clerk of the Crown in the Supreme Court. A son, John Millidge Putnam, was long a resident in England.

(3) George E. Fenety was the foremost newspaper man of his day in New Brunswick. He early saw there was an opportunity for a paper that would be published more frequently than once a week, and that would pay more attention to local news. He took advantage of the opportunity and established a tri-weekly paper, which printed all the latest news and vigorously discussed all the issues of the day. His sagacity and courage were rewarded with success, and for many years his paper, *The News*, was the leading provincial newspaper, and brought its owner large returns. Mr. Fenety was prominent in the fight for responsible government. He was an advanced Liberal, for those days, and his paper gave much strength to his party. The paper had among its correspondents Hon. Peter Mitchell, of Northumberland, and Sir Albert J. Smith, of Westmorland, while in York the able and admirable letters of "Jonas," written by L. A. Wilmot, added much to the interest and influence of its columns. In 1863 Mr. Fenety was appointed to the office of Queen's Printer, vacant through the death of John Simpson, Esq. When he became an office holder he ceased to have any political views for the public, although he occasionally wrote

for the press, and always wrote interestingly. He published, in 1867, a volume of 500 pages, entitled, "Political Notes and Observations," which furnished a history of the legislative struggles in New Brunswick for the principles of "responsible government." This work supplies a very valuable record of the political history of an eventful period, and the name of L. A. Wilmot naturally finds a prominent place in its pages. During his thirty-six years' residence in Fredericton, Mr. Fenety displayed much public spirit and filled important positions, always performing his duties with good judgment and to the satisfaction of the people. During the five years he filled the position of Mayor of the City, he declined to receive any salary, and the whole amount went towards the purchase of the clock on the City Hall. At his own expense he planted the beautiful avenue of trees, known as "Fenety Avenue," along the river bank. These were only samples of his public spirit and generosity. He was a man of the most exemplary moral character, and was happiest at his best in his beautiful home, "Linden Hall," opposite the cathedral, surrounded by his family. Few conversationalists could be more entertaining. His wonderful memory recalled vividly scenes and incidents of the past, even when he himself had passed the age of eighty years. He was born at Halifax in 1812, and died in the early days of October, 1899, in his 87th year.

(4) John A. Beckwith was born at Fredericton, December 1st, 1800. His father Nehemiah Beckwith, was an active and well-known man in the early days of the province. The first of the name in America was Matthew Beckwith, who came from Yorkshire, England, to Connecticut in 1635. In 1760 the brothers—Samuel and John Beckwith—emigrated from Lyme, Conn., to Cornwallis, N. S. At that time Nehemiah Beckwith, the youngest child of Samuel, was only four years of age. Nehemiah Beckwith

came to Maugerville, where, on the 16th December, 1780—as we learn from the old Sunbury County records—he purchased half of lot No. 78 in Upper Maugerville from Joseph Dunphy for £100. In the deed of conveyance he is described as “late of Cornwallis, but now of Maugerville, Trader.” He was a man of enterprise—the first to establish regular communication by water between St. John and Fredericton; a little later he engaged in ship-building, but in consequence of sharp practice on the part of General Benedict Arnold, with whom he was associated in the business, he lost all that he had. Eventually he retrieved his fortunes and became once more an enterprising and useful citizen. In the first provincial election he and James Simonds were candidates for the County of Sunbury in the interests of the “old inhabitants,” but they were defeated by Richard Vanderburg and William Hubbard, who were supported by the Loyalist inhabitants. Party spirit ran high for years between these two elements in Sunbury County. The wife of Nehemiah Beckwith was Julia le Brun, a descendent of an excellent French family. They made their home at Fredericton, where Nehemiah Beckwith met his death by drowning in 1812. His son, Hon. John A. Beckwith, was in many ways a remarkable man. In early life he was a lover of athletic sports, in which he greatly excelled, was an excellent cricketer and an accomplished skater, and in all manly exercises set a good example to the youth of Fredericton. His profession as a civil engineer gave him a wonderful knowledge of the country and its resources, and there were few who were better woodsmen than he. He represented York County for eleven years in the House of Assembly, was a member of the Executive Council, and filled the office of Provincial Secretary from 1867 to 1871. He was called to the Legislative Council in 1874, and continued a member in it up to the time of his death in 1880. Mr. Beckwith

was for a time Mayor of Fredericton, Chairman of the Provincial Board of Agriculture, a Director of the Quebec and New Brunswick Railway, and for many years Agent of the New Brunswick and Nova Scotia Land Company. Few men lived so active and vigorous a life, or were more highly esteemed. He was more familiar with the business of the Crown Land department probably than any one who has occupied a seat in the Provincial Government. From his mother he derived much of the vivacity characteristic of the French race. He was at all times a most entertaining and agreeable companion. His son, Harry Beckwith, succeeded his father as Agent for the New Brunswick and Nova Scotia Land Company, and was for several years Mayor of Fredericton. Another son, Charles W., was for years City Clerk, and a third son, Adolphus G., filled for many years the position of chief engineer of the public works department. Hon. John A. Beckwith's grandson, J. Douglas Hazen, has also filled the position of Mayor of Fredericton—the only instance in our Provincial history where the Mayoralty of a city has been held by three successive generations.

(5) George Stilman Hill was born in 1794, and graduated at Dartmouth College in New England. Early in 1819 he entered the office of Ward Chipman, Jun., as a law student. In this connection an interesting question arose which will be better understood by quoting Mr. Hill's own statement:

My Father was born on the 24th of Feb., 1772, in Machias; moved to Schoodiack in 1792 before he was married; lived on the American side of the river St. Croix between 4 and 5 years, not being able to purchase or procure a house on the British side. He bought a mill in St. Stephen, N. B., in 1792, transacted all his business and acquired his property there. He moved his family over in 1797, at which time I was not quite three years old. He never took the oath of allegiance to the United States, or held any place of trust or profit there, never trained or paid any tax, never worked on highways or voted in any Town meeting. He has regularly paid taxes in the County of Charlotte, is summoned to serve on juries, is

enrolled in the Militia, has taken the oath of allegiance to His Majesty, and is considered liable to all the duties of any other subject and inhabitant, and considers himself to all intents and purposes a British subject. When I was nearly 20 years of age I left the Province and resided in the States 4½ years for the purpose of pursuing an education, during which time I was at home 3 months. Since my Father moved into the Province I have not been out of it one month at any one time with the above exceptions.

If my Father is not to be considered as being entitled to all the rights and privileges of a natural born British subject, shall I, after receiving the Sacrament of the Lord's Supper and taking the oaths required by law, be considered a British subject by naturalization? (Signed) GEO. S. HILL.

The question propounded above was submitted by Ward Chipman, Jun., to the Judges, with his own opinion appended, which reads as follows:

It appears to me, that under the circumstances of the case, the father of Mr. George S. Hill having been born within the ligeance of His Majesty, and having before he came of age removed to the borders of the British Territory and purchased real estate and carried on business within this Province, into which he shortly after removed with his family, and not having disqualified himself by taking the oath of allegiance, or holding any office of trust or profit within the United States, will be considered, upon the principle adopted in Mr. Upton's case, as never having renounced the allegiance to His Majesty under which he was born, and consequently that he is to be considered as having been at all times a natural born subject, and entitled to the privileges of such subject. If this be so, Mr. George S. Hill (under the statutes providing that children, although born out of the King's ligeance, whose fathers were natural born subjects, shall be deemed natural born subjects themselves to all intents and purposes) must be considered a natural born subject. He has commenced his studies in my office, and before he proceeds further he is desirous of knowing whether he will be received by the Judges and admitted to the Bar as a natural born subject, or, if this cannot be, whether his residence in the Province during his nonage will entitle him to the benefit of the Statute of the 13th Geo. 2, Ch. 7, upon his taking the oaths and complying with the other requisites of that Act.

5th March, 1819.

W. CHIPMAN, JR.

Mr. Hill was the first barrister to practise law in St. Stephen. In 1830 he was elected one of the members for Charlotte County, and in 1848 became a member of the Government. In 1850 he was called to the Legislative Council. He died at Fredericton in the year 1858, while attending the legislature, in the 64th year of his age.

(6) William End was born in Limerick, Ireland. He studied law with William Botsford, and was admitted attorney in 1823. He settled at Bathurst, and when, in 1830, Gloucester was made a county, he was chosen one of the first representatives. He continued to represent the county for more than twenty years. From his political friends Mr. End never received the recognition his ability and services merited. He was a fine classical scholar and an able speaker. He was Clerk of the Gloucester County Court. His death was a tragic one. His office was evidently set on fire by the hand of an incendiary (perhaps by the hand of an assassin), and his body found in a position showing he had made an effort to escape. At this time Mr. End had passed his seventieth year.

(7) Lord Glenelg, better known as Sir Charles Grant, was at this time Colonial Minister in the Melbourne cabinet. He was a broad-minded statesman of experience in political life and having some acquaintance with colonial affairs. It was chiefly because of his timely assistance in the introduction of a more liberal system of government for the province, and on account of his efforts in promoting the objects sought by the delegation, that the portrait of this amiable statesman now hangs behind the Speaker's chair upon the walls of the Legislative Assembly room.

(8) William Crane enjoyed the pleasure of a *third* mission to London, which, in all probability, grew out of the second one. The nature of this mission will be found in the following extract:

Married, at St. John's Church, London, October 25th, 1838, Hon. William Crane, of New Brunswick, to Etna, eldest daughter of Thomas Wood, Esq., of London.

Mr. Crane was an astute politician and experienced member of the House of Assembly. His appointment as Wilmot's colleague on two important delegations was probably with a view to act as a check upon his junior's impulsiveness. The contrast between the two was such that it was compared to the yoking up in the same team of a veteran charger, stiff with age, and a young race horse that spurned the bit and bounded for the course. For many years Mr. Crane was one of the representatives for Westmorland, and at his death Speaker of the Assembly. He died at Fredericton, the 31st of March, 1853, during the session of the legislature.

(9) Hon. William Franklin Odell was born the 19th October, 1774, in Burlington, New Jersey, of which place his father, Jonathan Odell, was then rector. He was named after the last Royal Governor of New Jersey. He studied law in the office of the elder Ward Chipman. In 1812 he succeeded his father as Provincial Secretary holding the office until his death on November 25th, 1844, a period of 32 years. He married Elizabeth Newell, daughter of the Rev. Elisha Newell, D. D. of Allentown, N. J. Mrs Newell was a daughter of Rev. Dr. Samuel Cooke, the first rector of Fredericton. The Odell house, built in 1789, is still standing at the corner of Brunswick and Church Streets in Fredericton, a substantial structure, though now greatly modernized.

(10) Alfred Reade came to this province as private secretary to Sir William Colebrooke. He married Frances E. Colebrooke, the eldest daughter of the governor, the ceremony taking place on the 8th October, 1844, at Government House, the Venerable Archdeacon Coster, officiating. Notwithstanding the storm

that his appointment to the office of Provincial Secretary created, Mr. Reade held the office until the 17th of July following. While he was a resident of the province he became the owner of a large block of land near the village of Stanley, York County. This he offered in 1883 to Bishop Medley for the benefit of the Church of England. Bishop Medley advised that it should be conveyed to the Diocesan Church Society for the benefit of such churches as required help from the Home Mission funds. Mr. Reade disliked the idea of a voluntary society controlling the property and eventually the land was given to the Salvation Army.

(11) John Ambrose Street was the seventh son of Samuel Denny Street, who has been already mentioned in these pages, and a brother of Judge Geo. Frederick Street. He was born in Burton, Sunbury County, September 22nd, 1795. He was a lawyer by profession and a man of strong character and great natural ability. For twenty years he represented the County of Northumberland in the House of Assembly. He was attorney general of the province in 1851, when Responsible Government was in a transition state. The late Geo. E. Fenety said of him:

Her Majesty had no more loyal subject in British America than John Ambrose Street, but, like the "last of the Mohicans," he stood almost alone, when the days of his party had well-nigh drawn to a close, and he almost single-handed was left to fight its battles. He was just the man for the occasion, for, like Wellington at Waterloo, he did not know when he was beaten, and would not surrender until stress of circumstances absolutely compelled it. In debate he was apt at times to be tedious, his language was good, though he was not by any means fluent. He was always in earnest, and while speaking seldom suffered interruption. On the whole, he was one of the best *hitters* the Conservatives had. In private life he was polite and courteous, and withal frank and generous.

In the sessions of 1851 and the succeeding years he was obliged to meet, almost single handed, the attack of such assailants as Charles Fisher, William Johnstone Ritchie, Albert J. Smith and John M. Johnston. Had the Partelow-Street government remained in power one year longer attorney general Street would have gone on the Bench on the death of his brother Judge Street instead of William Johnstone Ritchie. Mr. Street died at Fredericton in 1865, in the 75th year of his age.

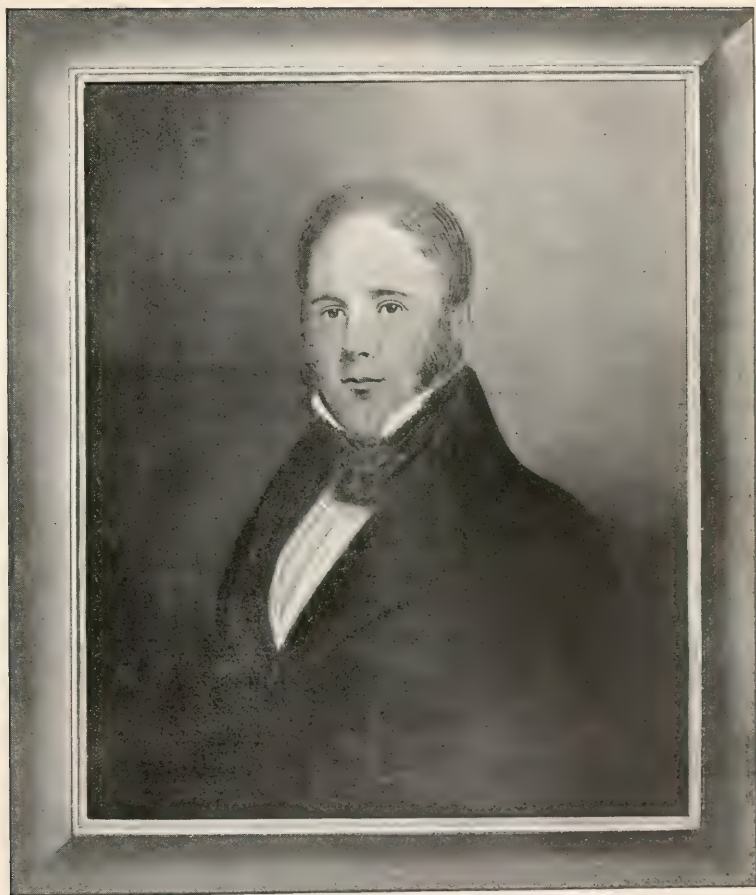
(12) Hon. E. B. Chandler, whose father was Sheriff of Cumberland County, N. S., was born at Amherst in 1800. He studied law at Sackville in the office of William Botsford. In 1823 he was called to the Bar and took up his residence at Dorchester. He represented the County of Westmorland in the House of Assembly from 1828 to 1834. He went with Hon. Charles Simonds on an important delegation to England in 1833 in connection with the removal of restrictions placed by the Imperial government on the revenue collected by the provincial customs officers and other matters. In 1836 he was called to a seat in the Legislative Council. In 1866 he was one of the delegates to London to complete the union of the British American Provinces. He declined a seat in the Canadian Senate. Although ambitious for a seat on the Bench, he failed in obtaining it, largely on account of his not remaining in the House of Assembly. Had he done this, he would no doubt have filled a crown office, from which he might have naturally been advanced to the Bench. In 1878 he was appointed Lieutenant-Governor of New Brunswick, holding the position until his death, which occurred at Government House, after a very short illness, on February 6th, 1880, at the age of eighty years. For more than fifty years Mr. Chandler was continuously in public life, for which he had a special aptitude. His wife a niece of Judge Botsford, survived him.

CHAPTER XVIII.

HON. NEVILLE PARKER.

Much that might otherwise have been said respecting the antecedents of Judge Neville Parker has already appeared in the sketch of his brother, Chief Justice Parker, in one of the preceding chapters.

Neville Parker was the second son of Robert Parker, Comptroller of Customs. He was born in St. John, June 8th, 1798. His mother was a daughter of Col. Nathaniel Hatch, of Strawberry Hill, Dorchester, near Boston. Colonel Hatch was a pronounced Loyalist, and at the close of the Revolutionary War went to England, where he died not long after at the village of Pangbourne-on-the-Thames. His widow removed to Devonshire, and here her daughter Jane met and married Robert Parker, who had come over from New Brunswick on a visit and who took her back with him to his home in St. John. They lived for many years in Prince William Street, opposite the Customs House. They had a family of four children, three sons, Robert, Neville and Addington, and one daughter, who became the wife of Major Frederick DuVernet, of the Royal Staff Corps. Robert and Neville, when quite young, were sent to school in Devonshire, England, and were afterwards educated at the St. John Grammar School and at the Collegiate School in Windsor, N. S. Both subsequently graduated at King's College, and both were students at law in the office of Ward Chipman, jr. There is a family tradition that Neville Parker, when a boy, was smitten with a desire to enter the navy, and that he applied to a captain of a man-of-war, who had been dining with his father, to take him in his vessel. This



HON. NEVILLE PARKER.

the captain agreed to do, but on his arrival at Halifax young Parker had become suddenly cured of his passion for the sea and returned home. It was imagined that his father had intimated to his naval friend that he did not wish the voyage to be made too attractive, as he had other views for his son.

Shortly after his admission to the bar in 1819, Neville Parker removed to St. Andrews, where he began the practice of his profession, and where in 1821, he married Elizabeth Margaret Shedden, daughter of Col. Thomas Wyer (1), a highly respected resident of St. Andrews and a Loyalist from Falmouth, Maine. They had a family of five sons and five daughters (2), only two of whom are now living. Mrs. Parker was a very superior woman and occupied an influential position in the circle in which she moved. Her ready sympathy, kindness and practical charity won for her the regard and esteem of all who knew her. At the time of her decease she had nearly reached her ninetieth year, and to the last she manifested the keenest interest in the welfare of the large and widely dispersed family circle.

During the continuance of his residence in St. John, Neville Parker achieved success in his profession. He was appointed Master in Chancery as early as 1823, and was for many years intimately connected with the proceedings of that court. This paved the way to his appointment as Master of the Rolls in 1838. He had in the meantime succeeded his brother Robert Parker as Judge of the Court of Vice-Admiralty, in 1833. In 1837, he was made a member of the Executive Council of the province under Sir John Harvey, but the tenure of this office was brief in consequence of his appointment as Master of the Rolls.

At the session of the legislature in 1836, a committee of the House of Assembly recommended the appointment of a Master of the Rolls. This office, in Eng-

land, goes back to at least the time of Henry VIII. The original function of the officer, as keeper of records, in the course of time passed from him, and he gradually assumed a jurisdiction in the Court of Chancery second only to that of the Lord Chancellor; he was chief of the Masters in Chancery and had the keeping of the rolls and grants, which passed the Great Seal, and the Chancery Records. When the Province of New Brunswick was first established, there existed in England a Master of the Rolls, a Chancellor and Vice-Chancellor, who presided over the Court of Chancery. The Lieut.-Governor here was assigned some, perhaps all, of the powers of the Lord Chancellor in reference to the Court of Chancery.

For the benefit of the general reader it may be well to explain that Equity, or Chancery jurisdiction, and Common Law jurisdiction are entirely separate and distinct, and governed by well defined and different principles, and that the Courts have an entirely different procedure. If, for example, A. makes a contract with B. to sell him a piece of land for a certain sum of money, and afterwards refuses to perform his contract, then at law A. would be bound to pay damages sufficient to compensate B. in the loss resulting from the breach of contract. But in Equity B. could compel A. to perform his contract and transfer the land to him, and restrain him from selling it to anyone else. It may be further observed that the Court of Chancery and the Court of Equity are really one and the same thing, the functions of the Master of the Rolls were nearly identical with those of a Judge in Equity, and those of a Master in Chancery with those of a Referee in Equity.

In the year 1838, an act of the provincial legislature was passed (1 Vic. Cap. 8) authorizing the appointment of a Master of the Rolls in the Court of Chancery with the same power and authority in respect to that Court in this province that the Master of the Rolls in

England had in respect to the Court of Chancery in the old country. He was responsible adviser and judge of the Court and signed all rules, orders and decrees, except in cases of appeal to the Chancellor. His salary was fixed at £800.

Lieut.-Governor, Sir John Harvey, in a letter to the Colonial Secretary, of March 16, 1838, states that the House of Assembly had passed an act making provision for the office of Master of the Rolls, and that he had selected the Hon. Neville Parker, senior Master of the Court of Chancery, a gentleman of the highest character and professional attainments, to fill that important office. He adds that he had reason to believe that the appointment had diffused the highest degree of satisfaction throughout the province. He then proceeds to speak in the following terms of the rank and precedence which should be assigned to the office:

With respect to the Master of the Rolls, looking to the corresponding situation in England and Ireland, I take it for granted that as the Lord Chancellor takes precedence of the Lord Chief Justice of the Queen's Bench and the Master of the Rolls precedes all the other chiefs and other judges, so the Master of Rolls in the colonies will naturally take rank after the Chief Justice. This rank I shall assign him accordingly, until I am honored with the signification of Her Majesty's commands on the subject.

The business of the Court of Chancery was not at this time sufficient to develop a "Chancery Bar," consequently the number of professional men who, for business purposes, or as a preferential study, had familiarized themselves with the principles of Equity or the procedure of the Court of Chancery, was small. The appointment of Neville Parker was undoubtedly the best that could be made. That he was fully equipped for the duties of the position there seems no question, and that he discharged these duties satisfactorily to the public and with credit to himself there

is no doubt. His decisions in the Equity Court were seldom appealed from and never reversed.

In the appointment of Neville Parker as Master of the Rolls, the Lieut.-Governor and his advisers soon found that they had gone a little too fast to please the authorities at home. The Colonial Secretary would not confirm the appointment nor approve the act vesting the appointment in the Governor-in-Council. At the next session of the House of Assembly the act was amended and the appointment vested in the home authority. Hon. Neville Parker was then appointed by the Crown. The Court of Chancery was constituted as follows: Chancellor, the Lieut.-Governor; Master of the Rolls, Hon. Neville Parker; Clerk of the Crown in Chancery, Hon. Wm. F. Odell; Registrar, Daniel Ludlow Robinson; Masters, Geo. F. Street, G. F. S. Berton, Henry Swymmer, Stephen Miller, Geo. J. Dibblee; Serjeant-at-Arms, William McBeath.

The Court sat only at Fredericton, which became the Westminster of New Brunswick. The cumbersome and expensive procedure of the English Court of Chancery was retained with some amendments. During the sixteen years that Neville Parker was Master of the Rolls the business of the Court was not large and could not compare with the amount and variety of business now disposed of in the Equity Court of New Brunswick.

In the early days of the province, however, there were some important suits in the Court of Chancery, the records of which are still extant. Probably the first in point of time was that between William Davidson, of Miramichi, and James Simonds, concerning their respective rights in a tract of 10,000 acres of land known as "Morrissania," situate below Fredericton, in what is now the Parish of Lincoln, Sunbury County. In the suit Ward Chipman appeared on be-

half of Mr. Simonds, and Elias Hardy on behalf of William Davidson, and the record of proceedings is of much interest. A still more important case was that of James Simonds *versus* William Hazen, Leonard Jarvis and James White, touching their respective rights in the great marsh east of the City of St. John. In this suit business transactions were involved extending over a period of twenty years, and the case was of so involved and intricate a character that in one form or another it was before the courts for about twenty-five years. The first bill of complaint against Simonds was filed by Chipman, acting for Hazen and Jarvis, on July 19th, 1792. It is a formidable roll of parchment, comprising about 12,000 words. The answer of Simonds, filed by Hardy, February 3, 1792, contains about 5,800 words. But this is only the beginning. On November 17, 1794 Hardy filed the cross bill of Simonds against Hazen, Jarvis and White, containing 17,000 words, written on sheets of paper twenty inches wide and attached to one another, so as to form a roll more than twenty feet in length. Not to be outdone, Chipman responded to this with an answer of 19,600 words on behalf of his client, which was filed with the Clerk in Chancery, May 26, 1795. The proceedings of this old Chancery suit are preserved in the Record Office in Fredericton. The law student will find in them much information concerning the mode of procedure in the early days of the Province, and will form a high opinion of the ability and industry of Chipman and Hardy, the legal giants of their time. To the student of local history, the records are of even greater importance, as they throw a flood of light upon the early history of the first English settlements on the River St. John.

The arrangement whereby the Lieut.-Governor held the office of Chancellor was an undesirable one, for the Governor, or Administrator, was frequently a man

untrained in the law. Judge Edward Winslow, in a letter written August 3, 1809, expressed himself as follows :

While there remains any appearance of misunderstanding between Great Britain and America, it may be very politic to place these colonies under the command of military officers of respectable rank and character. Ours [Gen'l Martin Hunter] is an unexceptionable military officer, but he is wonderfully out of his element in a Chancery Court or a Land Office.

The appeal from the judgment of the Master of the Rolls to the Chancellor was unsatisfactory. It is true that in practice the Lieut.-Governor called in the assistance of a Common Law Judge, upon whom there really rested the responsibility of disposing of the appeal. This was better than that the Chancellor should dispose of it himself, but it was an appeal from the decision of a man skilled and experienced as an Equity lawyer to that of a Common Law Judge who made no pretensions to any such skill or experience. This, with other considerations, led to the change which was made in the Court in 1854, of which we shall speak presently.

On receiving the appointment of Master of the Rolls, Neville Parker took up his abode at Fredericton, where he resided until the close of his life.

Governor Carleton, when first he came to Fredericton, lived in a house down on the flats below the town, facing the river on what is now the Ketchum property. The two large elms just back of the Ketchum house stood immediately in front of the Governor's doorway. On his arrival in Fredericton, Neville Parker bought this house and the land adjoining, and erected the dwelling which still stands and is known as "Elmcroft." He took much delight in his home and surroundings, and at the same time retained a warm affection for the places where he had formerly lived. As indications of this it may be noted that he displayed

much interest in the establishment at St. John of the Mechanic's Institute, and made a generous donation to its funds. His frequent visits to St. Andrews testified to his affection for that place in which he had spent the first years of his married life, and entered upon the practice of his profession. Nor does he seem to have been unmindful of his school days in Devonshire. The fact that Bishop Medley was a Devonshire man may have inclined the Master of the Rolls, who was himself rather a "low churchman," to come to his defence in the heated controversy which had arisen in the newspapers concerning the Bishop's supposed "high church" views. The reader will find in the appendix to this chapter some extracts from a communication which appeared under a *nom-de-plume* in the *St. John Courier* in 1847. The communication was generally ascribed to Neville Parker, and made not a little stir at the time. (3).

While the judicial duties of the Master of the Rolls took up a good deal of his time, he was a great lover of books and a man of fine literary taste. He was a most omniverous reader, and also kept up his acquaintance with the classics throughout his life. He took great interest in the welfare of the College at Fredericton, and was one of the Council. Though holding himself aloof from party politics he was a strong advocate of Confederation, and among other pamphlets, of which he was the author, was one addressed to the Earl Gray of that period, entitled, "Shall we keep the Canadas," in which he urged the importance of the North America Colonies and the necessity of retaining them in the empire. The vital importance of this was not realized by the people of Britain then as it is today.

The Master of the Rolls is conceded to have been an excellent lawyer. His life was an excellent example of *otium cum dignitate*. His position as

Equity Judge removed him largely from the eyes of men, and no doubt was congenial to one of his thoughtful and studious mind. His tranquility, however, was disturbed in the session of 1850, when the Attorney General, Hon. L. A. Wilmot, carried a bill through the House of Assembly for the reduction of the salaries of the Judges of the Supreme Court and other officials, including that of the Master of the Rolls. The Master of the Rolls expressed his wish to be heard at the bar of the House in reference to the bill. His request was granted, and a day appointed for the purpose. Mr. Parker appeared accordingly and addressed the House in a two-hour speech, protesting against the proposed action as a violation of faith on the part of the province towards the British government, which had entered into a compact to allow the sum of £14,500 sterling for a Civil List Fund for the salaries of judges and other officials of the province. The bill passed the Assembly by a large majority, however, but did not pass the Legislative Council. In the session of 1851, a dispatch was received from Earl Gray, stating that he considered the Master of the Rolls as placed on the same footing with the other judges and would not allow his salary to be reduced. In the course of the same year a commission was appointed, consisting of the Hon. W. B. Kinnear, James W. Chandler (who afterwards became Judge of the County Court of Westmorland) and Charles Fisher, for the revision of the statutes, and they were invited to suggest measures whereby suits of Law and Equity might be abridged and simplified. Among the recommendations of the commission was the transfer of the Court of Chancery to the Supreme Court. This change was not regarded with favor, either by the Master of the Rolls or the Judges of the Supreme Court, but it was carried into effect by act of the Legislature in 1854. The Equity

Act of 1854 abolished the Court of Chancery and the office of Master of the Rolls, and transferred to the Supreme Court all the authority and jurisdiction which had been exercised by the Master of the Rolls and the Court of Chancery, each Judge of the Supreme Court having the same equity jurisdiction as had been previously exercised by the Master of the Rolls. The Master of the Rolls was by the act made one of the Judges of the Supreme Court, making the total number five. The effect of this was to give the Supreme Court the entire Equity jurisdiction in addition to its Common Law jurisdiction, each of the five judges having the same power and authority. In addition to this, provision was made for an appeal to the full Court. The procedure was simplified and is practically the same today as established in 1854. The changes made have worked satisfactorily and have not given rise to the difficulties apprehended by the judges. For convenience in disposing of the work, one judge has done most of the work of the Equity Court, he being relieved from the work of the Circuits and most of the Common Law business except that of the Supreme Court *en banc*.

By the Equity Act of 1854, the Hon. Neville Parker became one of the Judges of the Supreme Court, ranking next after the Chief Justice, and he remained on the Bench until his death on the 6th August, 1869.

In appearance Judge Neville Parker was tall, well made and dignified, his complexion fair, his manner genial and courteous. His portrait, together with that of his brother Chief Justice Parker, may be seen on the walls of the Supreme Court room in Fredericton. It was painted about the time he was appointed Master of the Rolls. At the time of his decease he was on a visit at St. Andrews, the place where his early married and professional life had been spent. It happened that the house which had been built for

him by his father during the first year that he lived at St. Andrews was vacant, his body was removed thither, and his funeral took place from thence. His mortal remains now lie in the Rural Cemetery of St. Andrews, beside those of his wife and eldest daughter. Neville Parker was a man of sincere and unaffected piety, and greatly esteemed as a citizen of Fredericton.

NOTES.

(1) Thomas Wyer was the eldest son of David Wyer, an officer in the Customs at Falmouth, (now Portland) Maine. Thomas Wyer was a zealous Loyalist, and suffered much at the hands of a mob on his refusal to serve in the Continental Army. He was obliged to leave Falmouth in 1777, and went to Nova Scotia in an open boat along with his father-in-law, Jeremiah Pote. He afterwards went to New York where he commanded an armed vessel and fought the "Rebel Privateers." He went to Castine, at the mouth of the Penobscot in 1780, and built himself a comfortable house, in which he lived until the evacuation of that post by the British troops in January, 1784. He then came to St. Andrews with his family. His father, David Wyer, died in St. Andrews, in March, 1785. Thomas Wyer was the first sheriff of Charlotte County, holding the office from 1785 until 1790. He was interested in trade and lumbering and a very prominent man at St. Andrews. He died there in 1824, in the eightieth year of his age. His grant of land included Chamcook Mountain and Lake.

(2) The children of Judge Neville and Elizabeth Parker were:

1. Robert, a barrister of this Province, who married his cousin, Lavinia, daughter of Major F. Du Vernet, and had issue.
2. Jane—died unmarried.

3. Julia, married Lt.-Col. Edmund Cornwall Legh, C. B., Cheshire, England, commanding the 97th Regiment, and had issue.
4. Mary Elizabeth, married Capt. Andrew Anderson, of the Royal Regiment, and had issue.
5. Helen—died in childhood.
6. Neville Gray Du Vernet, M. D., married Annie, only daughter of Rev. S. Thomson, M. A., rector of St. George, N. B., and had issue.
7. Stanley Davenport, died in childhood.
8. Frederick Wyer, died unmarried.
9. Florence, married Harry Moody, Esq., Fellow of King's College, Cambridge, and A. D. C. to Lieut.-Gov'r Sir Arthur Gordon, and had issue.
10. Charles Edward Stanley, late Lt.-Col. of the Royal Highlanders ("Black Watch"), died in Scotland.

(3.) A long letter appeared in the *St. John Courier*, of May 1, 1847, in which Neville Parker writes ably in defence of Dr. Medley, whose appointment as first Bishop of Fredericton, he says, could have offered no inducement to him in the way of honor or profit, since he was on the road to much more lucrative preferment at home, for, besides possessing the living of St. Thomas Church, Exeter, he was prebend of the Cathedral of the same city, from which alone he had an income of £865 sterling with no laborious duty attached, and what made his position more desirable was that he lived and labored in a parish devotedly attached to him, and in the midst of a circle of friends who loved him for his worth, and respected him for his scholarship.

A few extracts from this letter *verbatim et literatim* will suffice to give an idea of Neville Parker's literary style.

There are many men who have felt that the Bishop's manner was curt. They expected that he would gloze and flatter and bend the knee, that his tongue was tuned to courtly airs. Idle themselves, they thought he need not be busy. Light and full of folly, they thought he need not be serious. Having a soft and aristocratic air, or that which they took to be such,

they could not suppose that a Bishop should be a man of plain manners and simple and unostentatious personal habits; but so it is.

But farther, Dr. Medley came with no promises of large and opulent salaries to expectant candidates for ministerial office as was expected. The consequence of this was, it was said, and the writer believes most truly, that some young men more learned than pious, who had more Greek than religion, gave up the cherished intentions of themselves and their friends, and sought professions in which they could better fill their pockets and gratify their ambition, throwing the odium of their disappointment on Dr. Medley.

I am ashamed to think that any of my brethren in the church should feel hurt because, amidst the multiplied and sacred duties which occupy his attention, he cannot waste his time in the shallow gossip of common life. The main question is: "Does he say what he means, and does he mean what he says?" and as I am convinced that he does, I feel naught else than pity and indignation at the cuckoo cry I have mentioned. The fact is this very plainness is one of those constitutional peculiarities—idiosyncrasies, I was going to say—which he can no more help than the color of his skin—plain language, plain manners, simple habits, and sermons that are plain and unornamented to a fault. In this respect he appears a very John the Baptist, and I can easily believe that it would be much more agreeable to him to be clothed and fed and lodged as he was, if he could preach repentance with him, and prepare the way of the Lord, than have soft raiment and dwell in royal houses under the endurance of conventional and tedious fripperies.

But it is charged that he is a lover of ecclesiastical architecture, and has built a chapel, on the gable of which he has affixed a cross. Church and chapel building by wealthy bishops or other church dignitaries has been, I think, *rather* a rare occurrence anywhere, and, without wishing to detract from the merits of Dr. Medley's polished and excellent predecessor, it just occurs to me that this was a fault of which I never heard him accused, and yet his professional income is, I apprehend, double that enjoyed by the present bishop of the diocese. Therefore it seems quite strange, an instance of liberality quite unusual, that a bishop presiding over a poor diocese, with a comparatively small professional income, should not only live plainly and simply, and be distinguished for unostentatious personal habits, but that he should, though hav-

ing a considerable family of children, devote largely of his means to the erection of an ecclesiastical building [St. Anne's Chapel] absolutely consecrated to the service of the Most High, and that this chapel, so built, should be absolutely free to all comers as long as the fabric shall last.

There is something ludicrous to me in the idea of Bishop Medley being a Jesuit, as has been affirmed. He is so anti-Italian, so thoroughly Saxon, so John Bullish, in short, I should as soon suspect the late venerable father of the City of St. John [John Ward, Esq.] or Dr. B. G. Gray. To my mind, he is the genuine representative of his country and his County of Devonshire, and if my brethren of New Brunswick were to travel through it, they would think with me that the soil and its products are too entirely English to produce genuine disciples of Ignatius Loyola.

In conclusion, let me say seriously, that an attentive observation of the man himself, of what he has said, and written, and done, since his arrival amongst us, and what his reputation before he came, leads my mind, at least, to feel quite at rest upon this subject. No one would affirm that his wisdom is such that he cannot err. Dr. Medley is a man of like passions with ourselves, and a warm, energetic and confiding nature exposes him to hasty action; but let us not love those who delight to irritate, depress and deceive him.

CHAPTER XIX.

SIR WILLIAM JOHNSTONE RITCHIE.

No single family in the Dominion of Canada, it may be safely said, has produced so many men of eminence in the legal profession as that of which the late Chief Justice Ritchie was a distinguished son (1).

John Ritchie, the progenitor of the family in Nova Scotia, came to Annapolis Royal from Boston shortly before the outbreak of the American Revolution. He was a native of Glasgow, and a very loyal British subject. Shortly after his arrival he married Alicia Maria, a daughter of Francis B. LeCain, of Annapolis. Their second son, Thomas, born September 21, 1777, was the father of Sir Wm. J. Ritchie. This Thomas Ritchie was a leading man in the community, and filled an important place in the judicial and political life of that section of Nova Scotia. He studied law in the office of Col. Thomas Barclay, who had himself been a student in the office of the celebrated John Jay, of New York, and, on the removal of Col. Barclay from the Province, succeeded to his large and valuable law practice. He entered public life in 1806, and for nearly twenty years was elected without opposition to the House of Assembly. In 1824 he resigned his seat to accept a place on the Bench of the Court of Common Pleas. He died on the 10th of November, 1852, in his seventy-sixth year. Calnek, in his History of Annapolis, writes of him:

Few men had greater influence in the community in which he lived, and still fewer knew how to exert such an influence so wisely and so well.

It was always a matter of pride to the late Chief Justice Ritchie that his father, as Judge of one of the



SIR WILLIAM JOHNSTONE RITCHIE

local courts, was one of the most respected men in the community in which he passed his days, and it may be doubted whether all the honors he himself acquired—the Chief Justiceship of Canada, Deputy Governorship of the Dominion, or rank as the second citizen of Canada—gave him as much real satisfaction as the fact that he was the son of a father so notable for his excellent qualities of mind and heart, that his name is remembered with honor in Annapolis to this day.

William Johnstone Ritchie was the third son of Judge Thomas Ritchie by his first wife, Elizabeth Wildman Johnstone, daughter of William Moreton Johnstone, and sister of the Hon. J. W. Johnstone, who for many years was the energetic and eloquent leader of the Conservative party in Nova Scotia—the opponent and chief rival of Joseph Howe—and who afterwards was appointed Chief Justice in Equity there.

It will be seen that Sir Wm. J. Ritchie came of a stock which, both on the paternal and maternal side, has been intimately connected with the politics of his native land and with the administration of justice in its courts. He was born at Annapolis on the 28th of October, 1813, and his mother died when he was less than six years of age. He received his preparatory education at the Pictou Academy under the celebrated Dr. Thomas McCulloch, who has been justly considered one of the best instructors and most successful managers of a high school we have ever had in the Lower Provinces. The education that young Ritchie received at Pictou was evidently of a very solid and useful character.

After leaving school he entered upon the study of law at Halifax, in the office of his elder brother, the late Hon. J. W. Ritchie (afterwards Judge of the Supreme Court in Equity), who at that time occupied

a very leading place in his profession as a barrister. In due course he was admitted an attorney, and about the year 1837 came to St. John, where there seemed to be at that time a fairer field for his abilities than in his native Province. After a residence and study of one year, a probation required of attorneys coming from another Province, he was admitted to practise in New Brunswick. As he had no family or other interest at St. John to aid him, he made his way solely by his own natural ability and force. His rise was not rapid, at the outset, but steady, and built upon a sure foundation. Business men gradually learned to place confidence in the sound judgment and strict integrity which marked his professional conduct, as well as in his prompt attention to the interests of his clients. This was the real and solid basis upon which, year by year, he built up the most extensive and lucrative practice, probably, that any one has enjoyed in the City of St. John. Nevertheless, in his later years, Chief Justice Ritchie used to relate, for the encouragement of the younger members of the profession, that after he opened his modest little office in St. John, he sat in it for six months without a soul coming in to consult him upon legal business. Not having been a law student in the city, he could not even claim the "crumbs" that might fall from "the rich man's table." The next six months he had one solitary case in the person of the *coal-man*. The second year of his practice his professional earnings amounted to only £5.

In the early years of his practice, Mr. Ritchie lived at what was known as "the Old Commissariat House," which stood on the site now occupied by Ritchie's Building, near the City Hall on Princess Street. His law office was in the same house, and here he practised for a good many years.

About the time Mr. Ritchie had comfortably estab-

lished himself in St. John, the struggle in New Brunswick between the "old family compact" and the reformers respecting the question of responsible government began to wax warm. It was impossible for any rising professional man to avoid mingling, to some extent, with politics, and Wm. J. Ritchie had to decide upon his course of action. To the surprise of many the young lawyer cast in his lot with the Liberal party. The surprise was due to the fact that his family and connections in Nova Scotia were strong Conservatives, and that in those days the leaders of the reform party in New Brunswick were regarded, to some extent at least, as upstarts, and those who sided with them ran the risk of some measure of social ostracism.

At the general election in 1842, Mr. Ritchie was an unsuccessful candidate for the City and County of St. John. But he had talents that could not long be ignored, and in the election in 1846, when he again entered the lists as a candidate, he was returned a member of the House of Assembly. As a speaker, he was not the equal in eloquence of some of the party leaders of the day, among whom there were men who might in any age and amidst any surroundings be regarded as powerful and graceful orators. Robert L. Hazen, John H. Gray and Lemuel Allan Wilmot were men who, whether at the Bar appealing to a jury, or in the halls of the Legislature discussing great public questions, were speakers of a very high rank. Nevertheless, the force, earnestness and strong common sense of Mr. Ritchie's utterances were such that in debate he was at times the equal of any of them. One of his admirers has said:

If he had not the polish and elegant diction of Gray, the vehement, over-bearing, argumentative force of Hazen, or the sweeping, flood-like eloquence of Wilmot, he surpassed them all, perhaps, in the intense, glowing, convincing earnestness his arguments displayed.

The chief leaders of the Liberal, or Reform, party at that time were L. A. Wilmot, Charles Fisher and George Stillman Hill, and the party was for some years in rather violent opposition to the Conservative party, led by R. L. Hazen, John R. Partelow (2) and E. B. Chandler, who stoutly opposed the introduction of responsible government. In the House of Assembly Mr. Ritchie was an active and useful member, and a ready and generally an effective debater. The late George E. Fenety, who was himself a keen observer of the political struggle for responsible government, in the evening of his days thus records his estimate of Sir Wm. J. Ritchie:

Probably, and without disparagement to others, this gentleman was the ablest lawyer that this province has ever known. Ritchie's power was more conspicuous at the Bar than in the Forum; in the former he was invincible, and soon took the lead. And yet, as a debater, he was formidable and persuasive, not by his captivating style, but by the force of his arguments and the way he applied them. As he could not be tripped, keeping a strong foothold, his blows told with unerring effect upon unguarded adversaries, and brought them to terms, sometimes to their own great amazement. Although no rhetorician, no opponent in that line, or even the best satirist, could daunt or throw him off his guard for a moment. He and the late John H. Gray could seldom see eye to eye in politics, although they were warm personal friends. Mr. Ritchie was brought up in an ultra Tory camp, yet he had sufficient independence of character, when he crossed the Bay and had made himself conversant with the political situation in this Province, to cast in his lot with the advocates of reform. Those who understood Ritchie found in him a very companionable, confiding man. Those who did not understand him sometimes thought him cold and unapproachable, and some even deemed him a Tory at heart. Nevertheless, we can only judge politicians by their actions, and by this standard I always found this gentleman a true man.

On the 16th March, 1847, a "grand Constitutional battle" was begun on the floors of the House of Assembly on the question of responsible government,

which was continued all day and was adjourned to a later date. Mr. Fenety reports this debate at some length in his "Political Notes," and his synopsis of the argument advanced by Mr. Ritchie is here quoted as a specimen of the hard knocks that gentleman was capable of administering to the Government.

Mr. Ritchie spoke in substance as follows:

It had been remarked by an honorable member that one dare not vote for the initiation of the money grants to be given up to the executive. He (Mr. Ritchie) had said at the hustings in 1841, that there never would be a proper government in this Province until such an executive should be constructed as would command the confidence, not only of the House, but of the country at large, and to an executive of this description he would yield up the initiation of the money grants. He had seen nothing since to induce him to alter his opinion. His honorable friend (Mr. Hazen) had said the other day, in speaking of the executive taking the lead in matters of great importance, "What can we do?" and had asked if he should copy the old School Bill or the old Revenue Bill, and throw it on the table like throwing a bone amongst a pack of dogs to quarrel about. That was not the way to bring down Bills to the House. They would and should have to come down with well digested Bills, take them up and explain them section by section, and state what they were based upon; and should they fail to work well after having been adopted by the House, the Government would have to take the consequences. There was another extraordinary thing to which he wished to direct the attention of the House; he alluded to the present mode of conducting Crown Lands. He was glad to see the head of that Department (Mr. Baillie) where he was, and he trusted he would explain matters connected with his office at an early day. Much had been said about the late appointments to the executive, but if they intended following the same course they had been following all along, why increase them at all? Why fill up the council? The old fragment could have brought down all the dispatches from Government House without the assistance of the new members, and that was apparently all they did. He had really expected that his honorable friend (Mr. Hazen) would have explained what he conceived to be the duties of the

Government. His honorable friend had said the other day, "What has the Government not done?" He (Mr. Ritchie) would now ask, in return, "What *has* the Government done?" When the question of yielding up the initiation of money grants to the executive should come fairly before the House, he would be prepared to give his opinion upon it. Before sitting down he suggested that the amendment moved by Mr. End, which was intended to shelve the question at issue, should be withdrawn. If the mover persisted in pressing it, he could only say to him, as he had said before, that he would bring up the question again in such a shape that he would defy them to get out of it.

Outside the party questions of the day, Mr. Ritchie was an active and useful member of the House. He took an especial interest in all measures designed to promote the various industries of the country—in the improvement of its agriculture, its manufactures, and its commerce, as well as in the construction of railways and other things calculated to develop the resources of a comparatively young and unsettled Province.

In the session of 1851, Mr. Ritchie moved a series of resolutions strongly criticizing the Government of the day, and advocating certain principles of reform. These resolutions, after having been debated for about a week, were rejected by a vote of 19 to 21, and the Government was thought to be tottering to its fall. An incident now occurred which showed that Mr. Ritchie and his colleagues, Messrs. Tilley and Simonds, were men of rugged independence of character, and certainly not opportunists. Early in August in this year, it was announced that John H. Gray and R. D. Wilmot, two of the members for the County of St. John, had abandoned their party and had become members of the Government. Messrs. Tilley, Simonds, Ritchie and Needham united in an address to their constituents, condemning the course of Messrs. Wilmot and Gray, and calling on the constituency to dis-

approve of it. However, Mr. Wilmot, who had been appointed Surveyor-General, and in consequence had to return to his constituency for re-election, was returned to the Assembly by a majority of 273. Upon this Messrs. Simonds, Ritchie and Tilley at once resigned their seats. Mr. Needham (3) declined to follow their example, alleging in his *naïve* way that he had had considerable trouble to get into the House and might not get there again. The sequel proved that the three resigning members were right, for they won much more in public respect by their conduct than they lost by their temporary exclusion from the House. Even those who did not share the views of Mr. Ritchie and his friends could not but admit that they had acted from a high sense of honor.

Mr. Ritchie, upon his retirement from the Legislature, gave himself up to the work of his profession. His practice increased, and he was a most diligent student. He was a man of strong physique and boundless energy, and his capacity for work amazing. He was always a student, and had a very tenacious memory, which made him a ready authority on any point of law. His clients could always feel assured that the closest attention and most profound study of a clear and well-trained intellect would be diligently applied in support of any cause he was retained to advocate. It was noted of him, too, that upon the trial of a cause, he so thoroughly identified himself with it, that it was almost impossible to conceive that he had any doubt whatever in his mind that his client had right and law upon his side, and was clearly entitled to a verdict. This quality in the advocate naturally produced a deep impression upon the jurors, and contributed not a little to his success as a pleader in the courts.

Sir Wm. J. Ritchie was already a rising lawyer when in early life he married Miss Martha Strang, a

beautiful young woman, whose father was a leading merchant in St. Andrews at a time when that port carried on an extensive trade with Great Britain and the West Indies. She was a sister of the wife of Robert Rankin, and of the wife of John Pollok, Jr., partners in the influential firm of Rankin & Co. Mrs. Ritchie died in 1847, four years after her marriage, leaving two children. In 1854 Mr. Ritchie married Miss Grace Vernon Nicholson, a daughter of the late Thomas L. Nicholson, of St. John, and a step-daughter of the late Admiral Wm. Fitz-William Owen, of Campobello (4).

During the period of his retirement from the Legislature, the honor of Queen's Counsel was offered to Mr. Ritchie. This he declined to accept, unless on condition that it should leave him entirely untrammelled as regards his political views. Sir Edmund Head had some correspondence with the Colonial Secretary before the appointment came. The Governor said in one of his despatches :

Mr. Ritchie is politically opposed to the existing council. Your Grace will therefore understand that this gentleman's appointment, if made by Her Most Gracious Majesty, is to be considered as offered and accepted without reference to party or political consideration of any kind. His professional claims are amply sufficient to justify my recommendation.

The appointment came two months afterwards, and few Canadian barristers have more worthily deserved the honor.

In July, 1854, a general election was held, in which S. L. Tilley and James A. Harding were returned for the City of St. John. For the City and County the returns seemed to show that this constituency was yet in an unsettled political mood, for three Government supporters, Messrs. Partelow, Gray and Wilmot, and their most implacable opponent, Wm. J. Ritchie, were all returned at the same time.

On the 20th of October a special session of the Legislature was called for the purpose of ratifying the Reciprocity Treaty with the United States. The election of Mr. Hanington as speaker, by a vote of 23 to 13, gave the opposition an opportunity to measure their strength with the Government. It was in vain that the Government endeavored to limit the proceedings of the session to a discussion of the treaty. Mr. Fisher, the leader of the opposition, declared that there were other things that must now be settled, including the very important question of who was to govern the country for the next four years. An amendment to the address was moved by Mr. Fisher to the following effect:

It is with feelings of loyalty and attachment to Her Majesty's person and government that we recognize in that provision of the treaty which requires the concurrence of this Legislature, a distinct avowal by the Imperial Government, of their determination to preserve inviolate the principles of self-government and to regard the constitution of the Province as sacred as that of the parent state. We regret that the conduct of the administration, during the last four years, has not been in accordance with these principles, and we feel constrained thus early to state to your Excellency that your constitutional advisers have not conducted the government of the Province in the true spirit of our Colonial constitution.

The debate that ensued was a memorable one, as it resulted in the downfall of the Government of the day and the substitution for the old regime of the modern system of party government, a system the merits and demerits of which, as contrasted with the former arrangement, it is not necessary here to discuss. The Government was ably defended by Attorney-General Street, Hon. R. D. Wilmot and Hon. John H. Gray. The opposition leaders in the debate were Messrs. Wm. J. Ritchie, S. L. Tilley, J. M. Johnson, Albert J. Smith and Jas. A. Harding. The debate extended over six days, and it was soon evident that

the Government was doomed. Members, regarding whom there had been some uncertainty, became converts to the policy of the opposition. On the night of the 27th of October, the eve before the final division was to take place, the exact position of every member was understood. The whole Province was in a state of excitement and the telegraph wires in continual operation. On the 28th Mr. Fisher's amendment was adopted by the following vote:

Yeas—Charles Fisher, William J. Ritchie, Albert J. Smith, James A. Harding, John M. Johnson, A. R. McClelan, James Steadman, P. McNaughton, William End, Chas. MacPherson, George L. Hatheway, Charles Connell, S. L. Tilley, A. H. Gillmor, John McAdam, James Brown, Francis McPhelim, R. B. Cutler, R. Sutton, C. Botsford, John Ferris, R. English, J. Tibbits, A. Landry, G. Ryan, E. Lunt and E. Stevens—27.

Nays—Hon. John Ambrose Street, Hon. John R. Partelow, Hon. John Montgomery, Hon. R. D. Wilmot, Hon. John H. Gray, Hon. Geo. Hayward, James Boyd, Francis Rice, J. Taylor, H. W. Purdy, M. McLeod and S. H. Gilbert—12.

One very curious thing in connection with the vote was that the mover of the original motion, James Brown, of Charlotte County, and the seconder, Enoch Lunt, of Sunbury, both voted for Mr. Fisher's amendment, and thereby assisted to defeat the Government. The storm centre of the debate was the question of the right of the Province of New Brunswick to make its own appointments to judicial and other offices without the interference of the Colonial office in England.

After the fall of the Street-Partelow Government, a new administration was formed, of which the following were members, Hon. Charles Fisher, Premier and Attorney-General; Hon. S. L. Tilley, Provincial Secretary; Hon. J. M. Johnson, Solicitor-General; and William J. Ritchie, Albert J. Smith and Wm. H.

Steeves, members without office. On motion of Hon. Mr. Ritchie, it was soon afterwards resolved that it was desirable and expedient that the Surveyor-General should hold a seat in the House of Assembly. In accordance with this resolution, Hon. James Brown, of Charlotte County, was a few weeks later appointed to the office of Surveyor-General. Other notable reforms followed. The Imperial Customs establishment was withdrawn, and it was agreed that the work should hereafter be performed by the Colonial officers. "So disappeared," writes Dr. Hannay, "the last remnant of the old Custom House system, which had been the cause of so many difficulties in all the colonies, which was the real occasion of the Revolution which separated the thirteen old colonies from the mother country, and which in the American colonies which were left to England had always been regarded as a grievance."

Another reform was the vesting in the Government of the day the initiation of all money grants, so that no private member could move the appropriation of money for public purposes except by the consent or through the action of the Government. The Government also undertook to frame a new tariff. The following session they introduced a new Election Bill, which provided for the extension of the franchise and also for election by ballot. This bill was the cause of an animated debate. The old school members contended for "open voting," which they claimed to be the more manly British way; the reformers, on the other hand, warmly endorsed the ballot as the only guarantee of purity in elections. In the course of the discussion, the Hon. John H. Gray spoke for two and a half hours against the bill, and was answered by Hon. Wm. J. Ritchie in a speech of equal length in favor of the bill. Mr. End remarked that the people of the Province would bless the present House for giving them the ballot, which would relieve them from tyranny and

ledger influence. The essence of the ballot he said, is the protection of the voter, and therefore it should be made as secret as possible. The bill was finally passed without amendment by a vote of 28 to 10.

Mr. Ritchie remained in the Government only for a brief period. On the 17th August, 1855, he was elevated to the Bench of the Supreme Court of New Brunswick to fill the seat left vacant by the death of Hon. George Frederick Street. There can be no doubt that if Judge Ritchie had remained in political life he would have won for himself a name as a statesman, but he retired from the public arena at too early an age to reap the reward of his talents in that particular field. He occupied the position of Judge of the Supreme Court for ten years, discharging the duties of that office with conscientious fidelity and ability until, upon the demise of Chief Justice Parker in 1865, he was promoted to the Chief Justiceship by the Provincial Government, of which Hon. Albert J. Smith was leader. The Lieut.-Governor of the Province, Sir Arthur H. Gordon, in his letter to the Colonial Secretary containing the announcement of the appointment, said:

Chief Justice Ritchie is very decidedly the ablest lawyer now on the Bench, and will, I have no doubt, discharge the duties of his high office in a perfectly satisfactory manner. His appointment has my entire concurrence and approval, and I am satisfied that in selecting him for the post a sound discretion has been exercised.

The capacity of Chief Justice Ritchie for work was remarkable. Other members of the court might be disposed to content themselves with expressing concurrence in the judgment of the majority or dissent therefrom in a few words, but the Chief Justice never failed to give full and explicit reasons for every judicial opinion he delivered, and his judgments were veritable storehouses of legal knowledge and careful argument,

involving great labor, research and study. A gentleman who had good opportunity to judge, says:

As a lawyer, Chief Justice Ritchie was one of a thousand, and his capacity, especially in cases of commercial law, has never been doubted. When he was the presiding Judge of the Bench of New Brunswick, he kept himself so thoroughly read up on all points of commercial law, that by reference to a little book which he had under his desk he could at any moment refer to a recent case touching on the subject in hand. His readiness in this respect was marvellous. But the Chief Justice was much more than a man of memory, he was a profound student of the law, and his ability to decide the most intricate questions of commercial law has never been surpassed on our Bench.

It is a curious fact that when Sir John A. Macdonald first proposed to establish a Supreme Court for the Dominion of Canada, Chief Justice Ritchie took a decided stand in opposition to the proposal, and embodied his reasons in an elaborate paper which he read before the Barristers' Society, and there is reason to believe that his objections went far to prevent the idea from being carried out at that time.

When, however, the Supreme Court of Canada was established, it was on all sides admitted that Chief Justice Ritchie was the fittest man to represent New Brunswick in the new court.

It was not until the 23rd of February, 1875, nearly eight years after Confederation, that Hon. Mr. Fournier, Minister of Justice, introduced a bill in the Canadian Parliament to create a Supreme and Exchequer Court, which, after considerable discussion, was finally passed. On the 8th of October ensuing, the Hon. William Buel Richards, Chief Justice of the Court of Ontario, was sworn in Chief Justice of Canada, and on the 8th November Hon. William Johnstone Ritchie was sworn in as one of the puisne Judges of that court. Judge Ritchie succeeded to the Chief Justiceship of Canada on the 11th January, 1879. He then removed with his family to Ottawa.

During his early professional and political life, Chief Justice Ritchie resided in St. John, and was a regular attendant at Trinity Church, in which he held a pew in the days of Dr. Gray, with whose evangelical teaching he was in hearty sympathy. He was a man of social instincts, and delighted particularly in the companionship of young people. He was never happier than when surrounded by his children and grandchildren. This fondness for young companions kept him young at heart to the end of his long and busy life. He was fond of out-door life, though a student, he enjoyed salmon fishing, and delighted in his garden. While he lived in St. John he owned the property on Mount Pleasant, then called the Crow's Nest, extending from Reed's Castle in the direction of Lily Lake, including the premises occupied in later days by J. P. C. Burpee, J. Murray Kaye, Charles A. Stockton, and others. The late Robert Reed, it may be observed in passing, had strong objections to perpetuating the name of Crow's Nest, and once wrote to the editor of the *Globe*, desiring that in all future references the place should be spoken of as Mount Pleasant, and asserting that "polite people had long since ceased to apply the name of 'Crow's Nest' to any part of the district." Although Sir William J. Ritchie never lived at Mount Pleasant, he built a conservatory upon his property, and brought a portion of it under cultivation. He was exceedingly fond of flowers, and gardening became quite a hobby with him.

About the year 1859 he took up his residence beside the little lake at Quispamsis, in the Parish of Rothesay—the name *Quispamsis*, signifying in the Indian language, "a little lake in the woods." The Chief Justice spent much time and pains in beautifying the grounds around his place, and found a welcome rest from the care and toil of his exacting profession in the

surroundings of his garden and in the companionship of his children.

After his removal to Ottawa he brought to bear upon the work of the Supreme Court of Canada the same industry and thoroughness that had marked his connection with the Supreme Court of New Brunswick. When at the age of seventy years, we find him entering upon a systematic study of the French language, in order to fit himself more thoroughly for his duty, we have an indication of his strength of purpose. He possessed a sturdy independence which constantly asserted itself. He was always on duty, and assisted at the hearing of every appeal that came before the Court from the time of his appointment until his death. Though always insisting on maintaining the dignity of the Court, he was kindly by nature, and particularly considerate to the younger members of the profession, whom he always took pains to encourage when they had occasion to appear before him, and to show them courtesy and attention.

On the 11th January, 1879, he was appointed Chief Justice of Canada, and on the 1st November, 1881, the Queen was pleased to bestow upon him the dignity of a Knight of the United Kingdom. Sir William J. Ritchie administered the oath of office to the Marquis of Lorne at Halifax, on his arrival to assume the position of Governor-General of Canada, and was afterwards Deputy Governor of Canada during the absence of Lord Lorne in England from July, 1881, to January, 1882, and again from September to December, 1882.

Sir Wm. J. Ritchie was not only an able and impartial, he was a fearless Judge, and little disposed to be influenced by the question of expediency. *Fiat justitia, ruat coelum*, was his motto—"let justice be done though the heavens should fall." His decision in the Ayer case was an example of this. In that case the Canadian Government brought an action

against J. C. Ayer & Co., of Lowell, Mass., for the payment of duty on raw material imported into Canada for the purpose of manufacture here. A man who had been discharged from the Ayer employ gave information which led to the seizure of the stock, and the amount involved was \$150,000. Judge Ritchie, sitting in the Exchequer Court, gave the matter much patient investigation, and finally ordered the return of the goods to Ayer, commenting in severe terms upon the conduct of the officers who made the seizure in the hope of sharing in the proceeds of confiscation.

Sir William was a master of the English language, and his written judgments remain as models of pure diction and literary finish. In the preparation of some of these judgments so much research was shown that the judgments almost reached the dimensions of treatises, and were sometimes criticised as too elaborate.

The end of Sir Wm. J. Ritchie's life and labors came somewhat unexpectedly. He had been active up to a very short time before his death. He passed to his rest, after an illness of three weeks' duration, at his residence in Ottawa, surrounded by nearly all the members of his large family. Such was his indomitable will power that a few minutes before his death he arose from his bed and attempted to cross the room.

The great respect in which Chief Justice Ritchie was held was shown by the telegrams and letters of condolence which came to his stricken household from all parts of the country, and also by the attendance at his funeral of all the cabinet ministers then in Ottawa, as well as the members of the Ottawa Bar. Sir John Thompson, Justices Strong, Fournier, Taschereau, Gwynne and Paterson were pall-bearers. The services were conducted by Rev. Mr. Snowden, rector of St. George's Church, of which the deceased had been a prominent member.

Commenting on the death of Sir William J. Ritchie, the *Ottawa Free Press*, in its leading editorial of the 26th September, 1892, observes:

The chief personality in Canada's judicial system is no more. Chief Justice William Ritchie died yesterday. It is only a few days since the Dominion Government granted the deceased gentleman eight months leave of absence, in the hope that complete relaxation might bring about his restoration to health, but alas, Providence has directed otherwise, and Canada's greatest Judge was yesterday summoned before the great Judge of all mankind.

At the time of his death Chief Justice Ritchie was in the 79th year of his age, and had worn the ermine for thirty-seven years. To his fellow-countrymen he left the inspiring example of a brilliant and useful life, and the reputation of a learned, upright and impartial Judge, whose memory will be respected and honored for many years to come.

NOTES.

(1) As is pointed out by the Hon. Judge Savary, editor of Calnek's History of Annapolis, the number of descendants of Judge Thomas Ritchie who have chosen the legal profession, many of whom have attained to eminence, is very remarkable. The list for the first and second generations is as follows:

SONS.

1. Hon. J. W. Ritchie, Judge in Equity of the N. S. Supreme Court.
2. Sir Wm. J. Ritchie, Chief Justice of Canada.
3. Rev. James J. Ritchie, Barrister for fourteen years before entering the ministry.
4. Geo. W. Ritchie, Barrister, who lived at Fredericton.
5. Hon. J. Norman Ritchie, Judge of N. S. Supreme Court.

GRANDSONS.

1. Thomas Ritchie, son of Hon. J. W. Ritchie, Halifax.
2. George Ritchie, do. do. do,

3. Robert R. Ritchie, High Sheriff of St. John, son of Sir Wm. J. Ritchie.
4. John Almon Ritchie, son of Sir Wm. J. Ritchie.
5. Owen Ritchie, son of Sir Wm. J. Ritchie.
6. Wm. Pollok Ritchie, son of Sir Wm. J. Ritchie.
7. J. J. Ritchie, K. C., of Annapolis, son of Rev. J. J. Ritchie.
8. W. B. Almon Ritchie, do. do.
9. Geo. W. Ritchie, of Halifax, son of Geo. W. Ritchie.
10. Charles T. C. MacColla, son of Judge Thos. Ritchie's daughter, Laleah.

In addition to the above, several Ritchies of the next generation have made the profession of law their choice. It is also worthy of note that two of the brothers of Sir Wm. J. Ritchie's mother, John and the Hon. J. W. Johnstone, attained notable positions in the legal profession.

(2) John R. Partelow's influence, in his day and generation, was very remarkable. Two of the leading writers of the political history of the Province have thus referred to him:

Hon. John R. Partelow was a man who might have acquired a great political reputation had the stage on which he appeared been a larger one. Mr. Partelow's qualifications for high public position did not depend upon his oratory, but upon his moderation and good sense. He was not born in high life (although descended from a respectable New York Loyalist family), and his early days were spent as a clerk in a store on the North Wharf in St. John. Even in that humble position, he made himself so useful and displayed so much ability that he was marked for higher preferment. The idea of his nomination for the City of St. John seems to have first originated with his employers, but when he got to the Legislature he speedily made his influence felt. Mr. Partelow spoke but seldom, but when he did address the Legislature it was generally with good effect, and after the debate had been to a large extent exhausted by previous speakers. He then had the faculty of drafting a resolution which seemed to express the general sense of all, and which was usually accepted as a solution of the matter. Mr. Partelow was a good business man, and therefore had a great advantage in legislative work

over those who were not so well equipped in this respect. New Brunswick may have produced greater men than he in public life, but none whose talents were more useful to the Province, or better fitted to serve its interests at a critical period in its constitutional history.—*James Hannay, in Life and Times of Sir Leonard Tilley.*

There was a time (especially in the forties) when there was no gentleman better known in New Brunswick than "John R. Partelow"—as he was familiarly termed by man, woman and child. In his prime he was the main prop and pillar of the Conservative party, not as a speaker or debater, but as a silent member, a deep thinker, having wonderful tact and a thorough knowledge of human nature. He was of commanding figure, six feet high and well proportioned. There was no *hauteur* about him, the commonest as well as the greatest ever found in John R. a hearty greeting. He represented St. John for many years in the House of Assembly, was Mayor of St. John in 1847 and Provincial Secretary in 1848. His perceptive powers and intuition on the floors of the House were most acute and remarkable. A debate upon some resolution before the House, which would perhaps occupy some hours, both sides laboring under great excitement, would be suddenly cut short and peace restored through the magic, as it were, of this shrewd diplomatist. Having in his seat perceived the leading ideas of the speakers for and against the resolution, he would frame an amendment to suit all parties, which he almost invariably carried, and no oil cast upon troubled waters could have produced a more sedative effect. To John R. Partelow his party owed a greater debt than they could ever pay; even the writer, who was politically opposed to him, could not avoid admiring the man, and sinking or rather subduing hostility to him in consideration of his amiable qualities and when the time came for appointing this once powerful man to the office of Auditor General (afterwards held by his son-in-law, James S. Beek, Esq.), and thus making provision for him in his declining years, both Liberals and Conservatives alike, had but one feeling in common in regard to the appointment.—*Geo. E. Fenety, in Political Notes, published in 1894.*

John R. Partelow was first elected to the House of Assembly in 1827. He died at Fredericton, January 13, 1865. aged 65 years.

(3) William H. Needham was one of the most remarkable men in many ways the Province of New Brunswick ever produced. He was a lawyer of much ability, and few could plead a case with greater skill and adroitness before a jury. As a speaker, he was in the very first rank, and whether at the hustings, in the courts, or on the floors of the Legislature, he spoke with great effect. Although not himself a college graduate, he was a warm advocate of higher education, and his speech in defence of the college at Fredericton, at a critical juncture, was said by many to have "saved the college." This circumstance should be held in remembrance to the honor of W. H. Needham by the friends of the Provincial University. Mr. Needham was of short and stout figure, and so bald and rotund that his appearance was suggestive of low comedy; and he had the capacity, too, of acting that part to perfection. He has been known to keep an audience at the hustings hanging upon his utterances for hours, much of that time in roars of laughter, over his funny stories, to the great discomfiture of the other candidates awaiting their opportunity to speak. Mr. Needham was Sir Leonard Tilley's colleague for the City of St. John in 1850. He afterwards was a representative for the County of York, and was also at one time Mayor of Fredericton. When in the St. John Common Council he was the great reformer of the old city charter. In private life, "Billy Needham," as he was affectionately called, was greatly esteemed for his social qualities. He was generous to a fault, and this trait in his character was the cause of many of the embarrassments that hampered him in his political career: Had he saved his earnings and possessed more steadfastness of purpose at the time of the ripeness of his popularity, no power could have hindered his political advancement or have kept him from the Bench.

(4) John Wesley Weldon was a native of Westmorland, and was born in the year 1805. He married Frances Chandler, youngest daughter and tenth child of Judge Joshua Upham. Their oldest child, the late Dr. Charles W. Weldon, Q. C., born February 21st, 1830, was a very eminent lawyer, who represented the City and County of St. John for several terms in the Dominion Parliament. After the death of his first wife in 1844, he married Susan, eldest daughter of Judge Thomas Chandler Haliburton, the author of "Sam Slick." Mr. Weldon was admitted an attorney in 1825, and commenced the practice of law at Richibucto, where he resided for many years. He represented the County of Kent for some time in the Provincial Legislature, and was Speaker of the House of Assembly for eight years. He was a Conservative in politics, and was defeated at the general election in 1850, when the battle over the question of responsible government began to wax warm. While at Richibucto he filled the office of Deputy Treasurer, Registrar of Probates and Clerk of the Peace for the County of Kent. Afterwards he removed to St. John and engaged in the insurance business. As he was quite out of politics, his appointment to the Bench in 1865 came as a great surprise, and was received with disfavor on the part of many. The vacancy on the Bench was consequent upon the death of Chief Justice Robert Parker. In his letter to the Colonial Secretary of the 4th December, 1865, Lieut.-Governor Gordon observed:

Mr. Justice Weldon was for several years Speaker of the House of Assembly, from which office he retired in 1850, since which time he has not taken any part in public life. He is, I believe, a sound, though not a brilliant, lawyer, and is a man of undoubted integrity and principle. In recommending for promotion to the Bench a gentleman not engaged in politics, my Council have adopted a course which might, with advantage, be more generally pursued.

Upon his appointment to the Bench, Mr. Weldon

removed to Fredericton, where he lived the rest of his days. It was thought that Judge Weldon's appointment would not add to the efficiency of the Bench, but, as a matter of fact, he made a very good Judge. His legal learning may have been somewhat rusty at the time he was appointed, but he was a painstaking man and worked hard to bring his legal knowledge up to date. Judge Weldon, as Dr. Hannay notices in one of his historical papers, was the first man to introduce a moustache on the judicial bench. This was considered at the time a rather startling innovation, though not now deemed inconsistent with the proper exercise of the judicial office. He cultivated the moustache, not as an ornament, but in the belief that shaving the upper lip is injurious to the eyes. Judge Weldon was a man of kindly nature, and in his quiet way a public-spirited citizen. In a letter to the late J. W. Lawrence, written in the year 1884, he says:

I can very warmly enter into your laudable endeavours to have some memorial in St. John to show that the feeling of loyalty exists in the present generation, as I hope it may exist in the hearts of those who may follow us. I remember the laudable effort you made to have a memorial erected in one of the squares in the City of St. John to perpetuate the memory of the landing of the Loyalists in 1783. A meeting was called, you and I and two or three others advocated a monument, and the rest were for a building with stores, which should yield a profit, and be an ornament to the city—our views to have a monument were thought to be too insignificant. The meeting broke up, but I never heard any one take any steps to forward the scheme which they advocated at the meeting. The monument would have cost not more than a few thousand dollars; it would entail no annual expense, and everybody would see the object. There are some difficulties in the way of a library now proposed as a memorial. At the same time I do not wish to be considered hostile to the object. If you get it arranged to be erected, I will contribute a few volumes, say 25 volumes.

Judge Weldon, at the time he wrote to Mr. Lawrence, was in his 80th year. He died at Fredericton

shortly afterwards. His widow was a kindly-hearted, but eccentric lady. She had a wonderful collection of china—many pieces of great historic value—which she bequeathed to King's College, Windsor. She had a great fondness for dogs, also, and many curious tales were told of her attention to these domestic pets.

(5) By his first marriage Chief Justice Ritchie had two children, a son William Pollok, who was a lawyer, and who died in Malta about the year 1870, and a daughter Martha, who married D. D. Robertson, Esq., and is now (1907) living with her daughters at Rothesay, N. B. To Mrs. Robertson the writer is indebted for a good deal of the information concerning her father which appears in this chapter.

By his second marriage Sir Wm. J. Ritchie had seven sons and five daughters, who are briefly mentioned below :

Eleanor Jaffray Ritchie, married Lieut.-Col. Hodgins, D. O. C., and lives at Ottawa.

Robert R. Ritchie, barrister, is High Sheriff of the City and County of St. John.

Rev. Frank W. Ritchie, ordained to the ministry of the Church of England in 1885, was for a short time curate in Herefordshire, afterwards missionary in Mashonaland and British Guiana; finally came to Canada and died at Ottawa in January, 1907, leaving a wife and three children. His death is the first break in a family of twelve.

John Almon Ritchie, of Ottawa, is County Crown Attorney and a partner in the well-known firm of Belcourt & Ritchie.

Owen Ritchie, barrister, of Ottawa, is a law partner of Hon. Sir Adolphe Caron.

Hazen Ritchie is an electrical engineer, and manager of the electrical works in Peterboro, Ontario.

Beatrice Ritchie married, July 6, 1905, Hon. Francis

MacNaghten, second son of Lord MacNaghten, of Runkerry, County Antrim, Ireland, and now lives in Calgary.

Ämy Maud Vernon Ritchie married James Smellie, barrister, of the well-known firm of Lewis & Smellie, Ottawa.

Wm. Johnstone Ritchie lives in Vancouver.

Veron Ritchie, the youngest of the family, is engaged in the Dominion Geological and Boundary Survey in Alaska.

Miss Grace Ritchie and Miss Elsie Ritchie reside with their mother, Lady Ritchie, at Ottawa.



John C. Allen

CHAPTER XX.

SIR JOHN CAMPBELL ALLEN.

The ancestry of Sir John C. Allen has been referred to already in connection with our account of the life of his grandfather, Judge Isaac Allen. It may, however, be of interest to quote the following brief sketch which Chief Justice Allen himself wrote, about the year 1883.

John Allen, the grandfather of Isaac Allen, emigrated from England to America and became a Judge of the Supreme Court of the Province of New Jersey. His son John was born in 1718, and in 1738 married Naomi Watson. They had three sons—John, Isaac and William, and one daughter—Hannah. The second son, Isaac, was born in 1741 and was educated for the Bar. He practised law in Philadelphia and in Trenton, and in 1769 married Sarah, the daughter of Thomas Campbell, a merchant of Philadelphia.

Shortly after the American Revolutionary War began, Isaac Allen, being a zealous Loyalist, was appointed Lieut.-Colonel of one of the battalions of the New Jersey Volunteers, a Loyalist corps raised in New Jersey and commanded by Brigadier-General Cortlandt Skinner. Lieut.-Colonel Allen's battalion was employed during the war principally in the Southern Provinces—Georgia and the Carolinas, and on several occasions rendered gallant service. One of Allen's bravest officers was his own brother-in-law, Captain Peter Campbell (1). Lieut.-Colonel Allen had a valuable property, which he forfeited in consequence of the side he took in the Revolution, the Executive Council of New Jersey having ordered that, unless he surrendered within a certain time and took his trial for treason, he should stand attainted and forfeit his estate.

He joined the Royal army under General Howe at New Brunswick, in New Jersey, in December, 1776. Before that time he was obliged to secrete himself to escape the vengeance of "the rebels," his family were turned out of doors, and his house converted into a hospital by the enemy. In consequence of his loyalty to the Crown, he was attainted and proscribed

at the close of the war. He lost in Pennsylvania and New Jersey property amounting in value to £2,400, including a large commodious two-story stone house, stables and other buildings in Trenton. The British Government afterwards awarded him £925 sterling in recognition of his losses. Previous to the evacuation of New York, he was sent to Nova Scotia by Sir Guy Carleton, along with Lieut.-Colonel Edward Winslow and Lieut.-Colonel Stephen De Lancey, to explore the country with a view to the settlement there of the officers and soldiers of the Loyalist regiments. He was accompanied to Nova Scotia by his family, consisting of a wife, brother and sister, five children and five servants. He obtained a grant of land at Wilmot, N. S., and remained there until the Province of New Brunswick was established. His only son, John, was born at Wilmot on the 27th June, 1784. Among his neighbors in Nova Scotia were Col. De Lancey, Col. Beverley Robinson, Jr., and Major Barclay, all of whom came from the Province of New York. On the organization of the Province of New Brunswick, Col. Allen was appointed to a seat in the Council. He was also appointed one of the Judges of the Supreme Court, his commission bearing date the 25th November, 1784. He then came to this Province with his family. He drew two lots of land in Parr-town, which he soon afterwards sold to Thomas Horsfield for £5 each, and went up the river to St. Ann's (now Fredericton). He obtained a grant of 2,000 acres of land seven miles above Fredericton, in Kingsclear. Within the bounds of this tract, fronting on the River St. John, was an old Indian settlement. The place was called by the Indians *Auk-paque*, which is said to mean in their language—the beginning of swift water. His grant included also an island opposite the above-mentioned tract of land, which was called *Isle Sauvage*, or Indian Island, containing 220 acres. This island had been for some years reserved for the Indians by the Government of Nova Scotia, and was held by Francis Xavier and three other chiefs of the Maliseet tribe. Colonel Allen purchased from the Indians their interest in the island, and in order to place his title to the lands beyond question they were included in his grant from the crown in the year 1795. He built a dwelling house upon the estate, about a quarter of a mile above the Indian settlement of Aukpaque, and resided there till his death—on the 12th October, 1806.

John Allen, the only son of Judge Isaac Allen, was greatly esteemed in the County of York. In early life

he took an active interest in military affairs, having imbibed his father's martial spirit. He was a captain in Colonel John Saunders' battalion of embodied militia, which was called out in 1808, in anticipation of war with the United States. After three months service the battalion was disbanded by order of Hon. Edward Winslow, the administrator of the government. Referring to the disbanding Judge Winslow says in one of his letters, "Captain John Allen has gained much credit, and he lays down his regimentals with much regret."

In 1813, Mr. Allen was gazetted a Captain in the New Brunswick Fencible Regiment, raised by General Coffin for the defence of the province in the war of 1812, and disbanded at its close in 1817. He was afterwards Lieut.-Colonel in the Provincial militia, inspecting field officer, and quarter-master-general. He entered into political life in the year 1809, and such was his popularity in the county that he sat continuously as its representative until 1847, a period of thirty-eight years. He was for many years a Judge of the Inferior Court of Common Pleas for the County of York. In 1845, Sir William Colebrooke appointed him to a seat in the Executive Council.

John Allen died at the old home at Aukpaque, or Springhill, in 1875, at the age of 91 years. His son, John Campbell Allen, the subject of this sketch, was born on the 1st of October, 1817, his middle name was that of his grandmother, Mrs. Isaac Allen, before her marriage. His mother's maiden name was Ann Blair. He received his early education at the Collegiate School in Fredericton, studied law with the Hon. John Simcoe Saunders and was admitted an attorney in October, 1838, when barely of age.

When a young man, Chief Justice Allen was a great lover of out door exercise. He had a magnificent physique and was able to swim across the St. John

River and back at Fredericton, where the width is nearly a mile. Even when his judicial duties became too onerous to admit of his taking many holidays, nothing pleased him more than to seek the country, after the manner of Cincinnatus of old, where he was equally at home with an axe, a pitchfork or a canoe. Like his father and his grandfather he had a natural fondness for military life. In 1835, when but a lad in his teens, he joined the volunteer artillery, in which he was subsequently captain and adjutant. His first appearance in a public capacity was as A. D. C. to his Excellency Sir Wm. Colebrooke, a position which he held for several years. He retired from the militia in 1865, the year he became a judge.

Shortly after his admission to the bar, and for some years subsequently, Mr Allen was employed by Judge Street, who was exceedingly deaf, as his amanuensis when he presided at the circuit courts. He was also for many years reporter of the proceedings of the Supreme Court, and six volumes of law reports compiled by him attest the value of his services in that capacity. His digest of the rules of the Supreme Court and Acts of the Assembly relating thereto, was once a standard work, and has formed the model for more modern works on the same subject.

The duties of John C. Allen, whether as a member of the Bar, a Crown lawyer or a Judge were never light and generally onerous. In addition to his law practice, he served in the legislature and was at various times a member of important judicial commissions. In 1845 he was appointed, with James A. Maclauchlan, on a commission to settle the land claims on the upper St. John, between Grand Falls and the River St. Francis, arising under the treaty of Washington. While the territory of this region was in dispute, the tract of country in question was being settled by the Acadian French and others, who were, in the eye

of the law, merely squatters on the lands. By arrangement made with the commissioners those who could show an undisputed possession of the lands they occupied for six years were confirmed in possession. The examination of these claims occupied the commissioners more than two years, and their work was highly commended. Grants were made by government in accordance with their recommendations.

Mr. Allen was always keenly interested in everything that tended to promote the welfare of the community in which he resided, and he enjoyed in a marked degree the confidence of the people of Fredericton. After the incorporation of the city the mayor was at first appointed by the Council. In the year 1851 the mayor was for the first time elected by the citizens, and their choice fell upon John C. Allen. He held the position for three years. So scrupulous was Mr. Allen in his conception of the duties of citizenship, that he at one time declined the exemption from taxation accorded to officials receiving their salaries from the Dominion government, although he was one of the largest tax-payers of the city. His connection with the legislature may be said to date from November, 1851, when he became Clerk of the Executive Council. He continued in the position until his election to the House of Assembly in 1856. A vacancy arose that year in the representation of York County in consequence of the death of James Taylor, Esq. The candidates were John C. Allen and W. H. Needham. Mr. Allen was elected by a considerable majority, and on the 1st of March was introduced to the House by Attorney-General Fisher and Charles McPherson. A few months later a general election was held in the province, which was keenly contested. In some of the constituencies an element of bitterness entered into the contest almost unparalleled in our political history. The better to understand this involves a slight digression.

On the 3rd of March, 1855, the Hon. S. L. Tilley, Provincial Secretary, introduced a bill in the legislature to prevent the importation, manufacture or sale of liquor. The bill passed its third reading on the 27th of March by a vote of twenty-one to eighteen. It was expected by some who, for political reasons, voted in its favor, that the bill would be rejected by the Legislative Council, but such was not the case. The passage of this prohibitory law, as Dr. Hanney points out in one of the chapters of his "Life and Times of Sir Leonard Tilley," was a bold experiment. The temperance movement in New Brunswick was hardly more than twenty years old. The use of spirits had been heretofore almost universal. Jamaica rum was imported in enormous quantities, and considered a remedy for every ill that flesh was heir to. It was supplied to the lumbermen to give them strength for their laborious work, and if it had been suggested that the same work could be done without any more powerful stimulant than tea, the person who ventured to make such a suggestion would have been regarded as insane. Experience has shown that more and better work can be done, not only in the woods but everywhere else, without the use of stimulants than with them, but no one could be got to believe this fifty or sixty years ago. Every kind of work and every social gathering was attended with the use of liquor as a matter of course. Every house-raising, every ploughing match, every election, every military training, had unlimited quantities of rum as one of its leading features. Some idea of the extent of the drinking habits of the people may be gathered from the fact that in 1838, when the population did not exceed 120,000, the consumption of rum, gin, and whiskey in this province was 312,298 gallons per annum, besides 64,579 gallons of brandy.

The act passed by the legislature came into force

on the 1st of January, 1857. The attempt to enforce the act aroused great opposition. Able lawyers were employed to defend the violators of the law and the sale of liquor continued. The conflict was particularly bitter in the city of St. John, where the number of taverns was not less than two hundred, and where, in addition, there were probably twenty wholesale dealers whose business extended to every section of the Province as well as to parts of Nova Scotia. When the turmoil was at its height, Lieut-Governor Manners-Sutton dissolved the House of Assembly, without the advice of his Council, in order that the people might have an opportunity of pronouncing upon the question of prohibition.

The bill passed by the Legislature had been introduced by Mr. Tilley as a private member, and was not regarded as a government measure, but the action of the Lieutenant-Governor in dissolving the Legislature, which had only been elected a little more than a year, without asking the advice of his Council at once raised an issue between his Excellency and his constitutional advisers. The temperance people and friends of the Government denounced the action of the Governor as tyrannical, unjust and entirely contrary to the principles of responsible government. The friends of the Governor and of the liquor interest approved his action as being in the public interest, and the cry, "Support the Governor," was raised in every constituency. The result of the election was the defeat of the Government. Mr. Tilley lost his seat for St. John City and Hon. James Brown, the Surveyor-General, went down to defeat in Charlotte County. A Conservative administration was formed, with R. D. Wilmot, Provincial Secretary; John H. Gray, Attorney-General; John C. Allen, Solicitor-General; John Montgomery, Surveyor-General; Francis McPhelim, Postmaster-General, and E. B. Chandler.

Robert L. Hazen and Charles McPherson, members of the Executive Council.

The tenure of office of the Conservatives was, however, brief. At the session of the House of Assembly in February, 1857, a most exciting and extraordinary situation arose. While the majority of the electorate were opposed to the measure that had brought about the downfall of the Tilley-Fisher Government, they were not, in other respects, disposed to be hostile to those who had been their leaders in the struggle for responsible government. What was true of the electorate was found to apply to very many of the newly-elected members. The House met in special session in July, 1856, and the Liquor Law was repealed by a substantial majority. The debate was noticeable for the strong constitutional address of the Hon. Charles Fisher. (2). The Governor, he thought, had abandoned his high position by identifying himself with this exciting question. At the recent elections the cry everywhere was "Vote for the Governor." He thought it a degradation that the Governor's name should be thus bandied about from poll to poll. This cry, Mr. Fisher said, had met him everywhere in his canvas throughout his county. He was satisfied, however, that after the excitement had subsided, people would begin to realize the broad fact that concerned so seriously their political liberties and welfare. He denied that his Excellency had the right to dissolve the House without the advice of his Council. The real object of the Governor had been to get rid of his Council, and he took his own method to accomplish it. [Here the Speaker of the House ruled the honorable gentleman to be out of order.] Continuing, Mr. Fisher protested against the idea that the Governor had the power to exercise the prerogative as he pleased—a most dangerous doctrine, which the House had repudiated when Mr. Reade was

appointed Provincial Secretary, by Sir Wm. Colebrooke in 1842. He denied that the Government, as a government, had been responsible for the passage of the Liquor Bill through the Legislature. But, after the Bill had passed the House and the Legislative Council, the Government could not ask his Excellency to withhold his assent to it. Mr. Fisher spoke for two hours, and discussed the constitutional points at issue in detail, quoting largely from works on the constitution and parliamentary practice extending far back into English history.

The Hon. Albert J. Smith also made a lengthy speech in opposition to his Excellency's course. He maintained that the Governor had listened to the advice of irresponsible men, and had been operated on by back stairs influence. He even insinuated that the members of the late Council, being men *from the people*, were perhaps not very congenial to the tastes of his Excellency.

The Liquor Law having been repealed, the House adjourned to the 12th of February, 1857, when the real test of strength between Government and Opposition was destined to bring about the anomalous situation, which led to the use of the term, "the Speaker's Government." When the House met, the Opposition boasted that with the Liquor Law out of the way, the Government could not stand a week. Mr. Fisher seized the first opportunity to move a vote of want of confidence, which was seconded by the late Sheriff Jas. A. Harding, of St. John, who, by the way, so doing excited the ire of many of his supporters. The mover of the resolution spoke at length in support of his motion. On the Government side a strong defence was made, Solicitor-General Allen being the first speaker.

As the debate progressed there was much speculation as to the result of the vote on the want of confi-

dence motion. Both sides claimed a probable majority, but the attitude of Messrs. Landry, Earle and McMonagle was much in doubt. Mr. Landry, it may be observed in passing, was the father of the present Judge Landry, a tall gentlemanly man, in whom the Acadians of Westmorland County had the utmost confidence, which he richly deserved. Mr. Fenety says: "It was always a question with Liberals and Conservatives, when parties in the House were closely balanced, 'How will the Frenchman go?' His integrity was unimpeachable, and he was never to be found among the loose fish."

After a week's debate the vote was taken on Mr. Fisher's motion of want of confidence, when the House divided as follows:

Yeas.—Messrs. Fisher, Hatheway, Smith, Gilbert, Gillmor, McAdam, Ferris, W. E. Perley, C. Perley, Tapley, Connell, Mitchell, Johnson, Sutton, McNaughton, Lewis, McClellan, Harding, Tibbets, Watters—20.

Nays.—Messrs. McPherson, Allen, Gray, Wilmot, McPhelim, Montgomery, Goddard, Botsford, Landry. McMonagle, Street, Z. Earle, Kerr, Desbrisay, J. Earle, Boyd, Scovil, Lawrence, Barberie, Read—20.

The Speaker of the House, the Hon. Charles Simonds, before giving the casting vote, rated both sides of the House in regular Cromwellian style. He referred to a remark that had been made by a member, "to the victors belong the spoils," and declared it to be illustrative of the whole system of the Government of the present day. Not one member on either side, he said, had displayed a spark of patriotism, and much more to the same effect. He characterized departmental government as an abominable system and claimed that the people were not safe under it. Should the Government be defeated the opposition would come in and divide the spoils. He gave the casting vote in favor of the Government.

The remarks of the Speaker were warmly resented by the opposition, and Messrs. Fisher, Harding, J. M. Johnson, Mitchell and Albert J. Smith expressed themselves in strong terms. Peter Mitchell said in effect, on the following day, that when he left the House last evening, he had such feelings as he hoped never to have on any future occasion. He respected the Speaker of the House, but when they were told by him that what they were doing for the last eight days consisted in nothing more than a scramble for office, and that the whole question had been discussed irrespective of feelings of patriotism, then he for one member felt insulted by such remarks. He was not going to find fault with the Speaker for expressing his views on departmental government, but he was going to find fault with the Speaker for lecturing the House as he did last evening, and as an independent representative would not quietly submit to it.

During the session the "Speaker's Government," as it was ironically termed, had to move cautiously and venture nothing likely to be distasteful to the "first commoner." On the 26th of March, however, the crisis came, the Government having learned that Mr. McMonagle, one of the members for Kings, had transferred his allegiance to the opposition. The Attorney-General, Hon. John H. Gray, informed the House that the Government had unanimously agreed to recommend his Excellency to prorogue the Assembly with a view to a dissolution. Hon. Albert J. Smith thereupon moved that :

Whereas, The members of the Executive Council have declared their inability to carry on the business of the country ;

Therefore resolved, That it is the opinion of this House they should immediately resign.

Mr. Smith spoke at considerable length in support of his motion, and Mr. Street spoke for an hour in opposition to it. The Opposition were now anxious to have the question put, but Mr. J. W. Lawrence rose

to speak—with private instructions from his friends to hold the floor until the Governor arrived to prorogue the House. After Lawrence had spoken for an hour the Opposition became very impatient. A scene of confusion and disorder ensued. Mr. Lawrence persisted in keeping the floor, despite all interruptions. The galleries were crowded and the occupants were equally excited with the members. The standing order to clear the galleries was moved amid still greater excitement. This the Sergeant-at-Arms was unable to effect. Mr. Smith rose to speak and was interrupted from the gallery. He declared, with much warmth, that he was not going to be browbeaten by a Fredericton mob, and added that it was high time for the removal of the seat of Government. The House was at length cleared, but there was great excitement outside. Mr. Lawrence still persisted in keeping the floor, and the greatest confusion prevailed. His deafness rendered him in a large measure oblivious to the many cries and interruptions of his antagonists, who hovered about him like a group of angry hornets. Mr. Lawrence finally gave way to Mr. McMonagle. Before the question could be taken the Lieutenant-Governor arrived and summoned the members to attend him at the Council Chamber. Of the forty-one members, twenty-one remained in their seats, and twenty proceeded upstairs, where his Excellency prorogued the House, with a view to its dissolution.

The excitement attending the ensuing election was, if possible, even greater than that during the election of 1856. The County of York returned three Government supporters, Messrs. McIntosh, Allen and McPherson, and one opposition member, Charles Fisher.

The election returns showed the vote to have been as follows:

McIntosh..	1,146
Allen..	1,141
McPherson..	1,103
Fisher..	1,048
Yerxa	1,035
Hatheway	1,031
Pickard....	936
Friel..	806

This was the third successful election which was run by Mr. Allen in the course of fifteen months. In the province at large the Opposition won the election by a big majority. The Government at once tendered their resignation, and a new administration was formed.

In 1862 a vacancy occurred in the new government in consequence of the resignation of the Hon. Albert J. Smith, who differed from his colleagues on their railway policy. The Hon. John M. Johnson then resigned the Speakership to take the office of Attorney General. At the ensuing session in February, 1863, John C. Allen, although differing from the Government of the day politically, was elected Speaker of the House, the duties of which office he discharged impartially, and to the satisfaction of all the members. His election was due to the esteem in which he was held by the individual members of the House, irrespective of party. In 1865 the House was dissolved in order to test public opinion on the question of the Confederation of the British North American Provinces. This, without doubt, was the most important political question ever submitted to a popular vote in New Brunswick, and it was one upon which there was the greatest divergence of opinion. Mr. Allen promptly and decidedly declared his opposition to the proposed change. It may, however, be questioned whether he was inflexibly hostile to every kind of provincial union. But at least he regarded the question of union as premature, and objected to the

details of the scheme submitted. He also entertained some fear that Confederation might prove the entering wedge for separation from England by interposing another authority.

This is not the place to consider in any fullness of detail the Confederation of the Canadian Provinces. The history of the event, so far as New Brunswick is concerned, is admirably told by Dr. Hannay in his "Life and Times of Sir Leonard Tilley." The first test of public sentiment in the general election of 1865 was disastrous in the extreme to those who were the advocates of Confederation. All the counties save Carleton, Restigouche and Albert were unanimous in their opposition to the proposed union. Out of forty-one members the friends of Confederation only succeeded in returning six. This was the most overwhelming defeat that ever overtook any political party in the Province of New Brunswick. Yet fifteen months later the verdict of March, 1865, was completely reversed and the advocates of Confederation were as much in the ascendent as they had been before in a seemingly hopeless minority.

When the Tilley-Fisher government was defeated in 1865 a new administration was formed by Hon. Albert J. Smith with John C. Allen Attorney-General; A. H. Gilmour, Provincial-Secretary; Bliss Botsford, Surveyor-General; Geo. L. Hatheway, Chief-Commissioner, and W. H. Odell, Postmaster-General; Messrs. R. D. Wilmot, Richard Hutchinson and T. W. Anglin members without office. Almost immediately the Premier and the Attorney-General proceeded to England to endeavor to stop the pressure exerted upon the Province by the home government in favor of Confederation. In this they were not very successful.

The retirement of Sir James Carter from the Chief Justiceship and the promotion of Judge Robert Parker to that position in September, 1865, created a vacancy

on the Bench to which Mr. Allen was immediately appointed. The appointment was viewed with favor, not only by the legal profession but by the community at large, and in going the round of the circuits Judge Allen was the recipient of a series of congratulatory addresses on the part of grand jurors and county magistrates which were heartfelt and sincere. The writer of this sketch distinctly recalls the occasion when, on Sir John's first visit to Woodstock in his judicial capacity, an address from the justices of the peace for the County of Carleton was read by John Dibblee, Esquire, the senior magistrate, then in his eightieth year, and as fine a specimen of the old Parish Magistrate as the Province ever produced. Judge Allen rose quickly from his seat on the Bench as the venerable magistrate adjusted his spectacles and proceed to read in a voice, at first a little shaky, but which grew stronger as he went on, an address expressing the confidence of the community that John C. Allen would worthily fill the position of a Justice of the Supreme Court of New Brunswick, a Court which had ever been distinguished for ability and integrity. Judge Allen's reply was singularly modest, and marked by the utmost sincerity. His courteous and gentlemanly bearing, fine personal presence and almost deferential attitude toward the venerable magistrate, who had been a life long friend of his father, made a profound impression upon the assemblage. He expressed mild dissent to the more laudatory passages of the address, and observed with quiet dignity, "I do not think I am a vain man. I hope I never shall become so."

During his political career Judge Allen's opportunities for identifying himself with important legislation were limited. The greater part of the time that he was a member of the House of Assembly, he was either in opposition or in the Speaker's chair. It may be said with truth that he was always more the

lawyer than the politician. He possessed in an eminent degree the qualities requisite for his judicial duties. A reputation for honesty, above suspicion, a temper almost incapable of being aroused, a fair and impartial mind, marked ability and untiring industry. A competent critic says Judge Allen was remarkably well grounded in the principles of Common Law and was particularly strong in crown, real estate and practice cases, and, although his experience at the Bar was obtained in an inland town, he never discharged his duties otherwise than satisfactorily in marine and commercial matters. Few men possessed a more charming personality. His face was calculated to attract the attention of a stranger, both for its manly beauty and for its dignified intellectual character. In his lifetime there were none who did not respect him, and among those who knew him there were none who did not warmly esteem him. His kindness of heart was proverbial. He scarcely ever attended a circuit without seeking out and cheering with a visit, some old acquaintance, who had known better times now old, or sick, or out of sight and almost out of mind. Among the recipients of his bounty were Indians, and descendants of slaves, manumitted by his grandfather Isaac Allen and his contemporaries.

Possessing a keen sense of humor and a retentive memory, Judge Allen always enlivened the circle in which he moved, and while he delighted in telling a good story he was an equally good listener. By his brother judges, the members of the Bar and a large circle of friends and admirers he was always regarded as a delightful companion.

A writer of an appreciative article, published in a Toronto journal in Sir John Allen's lifetime, says:

"Sir John resides at Fredericton in a plain, substantial house, surrounded by trees, almost beneath the shadow of the Parliament Buildings and the Court

"House and within easy hearing of the chimes of
"Christ Church Cathedral. His library faces the
"street to the right of the hospitable looking entrance.
"The light burns steadily within this apartment into
"the small hours, for the Chief Justice is a most in-
"dustrious worker, and is not willing to seek repose
"till he has accomplished his appointed task. He has
"a large family, all sons, two of whom are lawyers,
"one of them being Clerk of the Supreme Court, so
"that although the system of caste does not exist in
"Canada, it is evident that occasionally the law of
"heredity prevails within its bounds."

On the 8th of October, 1875, he was appointed Chief Justice of New Brunswick in succession to Sir Wm. J. Ritchie, who had been promoted to the Supreme Court of Canada. Few lawyers in the British dominions have declined a Q. C., but Chief Justice Allen was one of them. He was tendered the honor in 1860, but did not accept for personal reasons, based on his political attitude to the government of the day. The University of New Brunswick conferred on him in 1882, the degree of LL. D., an honor that up to that time had not been bestowed upon any other. He also received the honorary degree of D. C. L. from Kings College, Windsor, in 1890. He was an active member of the Senate of the University of New Brunswick, and always manifested the greatest interest in educational matters.

The esteem in which he was held by the members of the Bar was strikingly displayed on the occasion of the fiftieth anniversary of his admission to the Bar, which occurred on the 13th of October, 1888. On the evening of that day the members of the legal profession in St. John, between seventy and eighty in number, met at the Court House, and in the presence of a large assemblage of leading citizens and their wives and daughters, presented an address and a valu-

able piece of plate to the Chief Justice. It would have been impossible to have secured such unanimity of sentiment among so many lawyers with regard to any other matter as was displayed on this occasion, and the terms of the address as well as the spirit that inspired it, must have afforded the Chief Justice intense satisfaction. The massive silver testimonial which accompanied the address was afterwards displayed in the window of the firm of J. & A. McMillan in their building which stands upon the lot originally drawn in Parr-town by Judge Isaac Allen, the grandfather of the Chief Justice.

The popularity enjoyed by Chief Justice Allen was by no means confined to his contemporaries. He was always considerate with the younger members of the profession, and had the happy faculty of being companionable without in any way diminishing the respect in which he was held.

A leading barrister of another province once was attracted by the hearty laugh of a fine looking gentleman, who was engaged in an animated chat with a group of youthful members of the New Brunswick bar. A look of blank astonishment overspread his face upon being told that the gentleman in question was none other than Sir John C. Allen, the head of the judiciary of New Brunswick. It may be mentioned in this connection that on a certain occasion a resolution was adopted by a small meeting of the Barrister's Society at Fredericton, requesting the court to call upon counsel to address the judges by the title of "My Lord," as is customary in the Supreme Court of Ontario and elsewhere in Canada. The democratic instinct was, however, too strong in Chief Justice Allen and his colleagues to accede to the request, and the judges of New Brunswick are still content to be styled "Your Honor" and not "Your Lordship."

Chief Justice Allen was knighted in 1889. The

esteem in which he was held by the bar of the province was again expressed in 1893, when the members presented his life-size portrait to be hung upon the walls of the Supreme Court room in Fredericton.

In June 1878, he was appointed one of the arbitrators for settling the Northwest boundary of Ontario, his colleagues being Sir Edward Thornton, the British minister at Washington, and Chief Justice Harrison of Ontario, but the pressure of his judicial duties prevented him from serving. In the course of his work as a Judge of the Supreme Court, he was called upon to preside at some of the most important criminal trials that were ever tried in New Brunswick. Among these were the trial in 1869, of John A. Munroe, for the murder of Sarah Margaret Vail; the first and second trials of the Osbornes, for the murder of Timothy McCarthy at Shediac, in 1878; and the trial of the persons concerned in the Caraquet riots in 1875.

While holding Court at St. Andrews, in the autumn of 1893, Sir John C. Allen was stricken with paralysis. It was hoped by his friends that he might regain some measure of his former health and vigor, but their hopes were never realized. His resignation was tendered on May 13th, 1896, when he was succeeded in the office of Chief Justice by Hon. Judge Tuck. He lingered in infirm health until the 27th of September, 1898, when he passed to his rest at the age of eighty-one years. By his wife, Margaret A. Drury, daughter of the late Captain Charles A. Drury, of the 20th Regiment, he had a family of six sons, four of whom survived him, viz., T. Carleton Allen, Clerk of the Supreme Court; Wm. K. Allen, ex-M. P. P.; Edmund H. Allen and George W. Allen, M. P. P. barrister.

In religion, Sir John C. Allen was a member of the Church of England and a very active layman in the

able piece of plate to the Chief Justice. It would have been impossible to have secured such unanimity of sentiment among so many lawyers with regard to any other matter as was displayed on this occasion, and the terms of the address as well as the spirit that inspired it, must have afforded the Chief Justice intense satisfaction. The massive silver testimonial which accompanied the address was afterwards displayed in the window of the firm of J. & A. McMillan in their building which stands upon the lot originally drawn in Parr-town by Judge Isaac Allen, the grandfather of the Chief Justice.

The popularity enjoyed by Chief Justice Allen was by no means confined to his contemporaries. He was always considerate with the younger members of the profession, and had the happy faculty of being companionable without in any way diminishing the respect in which he was held.

A leading barrister of another province once was attracted by the hearty laugh of a fine looking gentleman, who was engaged in an animated chat with a group of youthful members of the New Brunswick bar. A look of blank astonishment overspread his face upon being told that the gentleman in question was none other than Sir John C. Allen, the head of the judiciary of New Brunswick. It may be mentioned in this connection that on a certain occasion a resolution was adopted by a small meeting of the Barrister's Society at Fredericton, requesting the court to call upon counsel to address the judges by the title of "My Lord," as is customary in the Supreme Court of Ontario and elsewhere in Canada. The democratic instinct was, however, too strong in Chief Justice Allen and his colleagues to accede to the request, and the judges of New Brunswick are still content to be styled "Your Honor" and not "Your Lordship."

Chief Justice Allen was knighted in 1889. The

esteem in which he was held by the bar of the province was again expressed in 1893, when the members presented his life-size portrait to be hung upon the walls of the Supreme Court room in Fredericton.

In June 1878, he was appointed one of the arbitrators for settling the Northwest boundary of Ontario, his colleagues being Sir Edward Thornton, the British minister at Washington, and Chief Justice Harrison of Ontario, but the pressure of his judicial duties prevented him from serving. In the course of his work as a Judge of the Supreme Court, he was called upon to preside at some of the most important criminal trials that were ever tried in New Brunswick. Among these were the trial in 1869, of John A. Munroe, for the murder of Sarah Margaret Vail; the first and second trials of the Osbornes, for the murder of Timothy McCarthy at Shediac, in 1878; and the trial of the persons concerned in the Caraquet riots in 1875.

While holding Court at St. Andrews, in the autumn of 1893, Sir John C. Allen was stricken with paralysis. It was hoped by his friends that he might regain some measure of his former health and vigor, but their hopes were never realized. His resignation was tendered on May 13th, 1896, when he was succeeded in the office of Chief Justice by Hon. Judge Tuck. He lingered in infirm health until the 27th of September, 1898, when he passed to his rest at the age of eighty-one years. By his wife, Margaret A. Drury, daughter of the late Captain Charles A. Drury, of the 20th Regiment, he had a family of six sons, four of whom survived him, viz., T. Carleton Allen, Clerk of the Supreme Court; Wm. K. Allen, ex-M. P. P.; Edmund H. Allen and George W. Allen, M. P. P. barrister.

In religion, Sir John C. Allen was a member of the Church of England and a very active layman in the

councils of the Church. He regularly attended the meetings of Synod, and there was none more prudent in counsel and wise in legislation than he, or who rendered the Church better service.

This sketch should not close without mention of the fact that Chief Justice Allen, more than any one else perhaps, encouraged the late Joseph W. Lawrence to persevere in the compilation of this work on the "Judges of New Brunswick and their Times." Shortly before he was stricken with paralysis he had undertaken to be responsible for a considerable portion of the cost of publication. His interest in the undertaking was not due in any great measure to his own connection with the Bench, but was an indication of his lifelong interest in his native province, its history, its people and its resources.

The late W. K. Reynolds closes a well merited tribute to Sir John C. Allen in the following words:

It is something for those who come after us to remember that, whatever may be the stamp of men who sit upon the Bench in future years, we have at least had such jurists as Ludlow, Bliss, Saunders, Chipman, Parker, Carter, Ritchie and Allen as Chief Justices of New Brunswick—men differing essentially one from another in certain respects, but all alike worthy of their high station, and all alike adding to its lustre.

It may be said with truth, that as a lawyer, a legislator, a crown officer and a Judge of the Supreme Court, John Campbell Allen dignified and adorned the position he held. His positions came to him unsought, because he was recognized as the right man in each instance. He added to the dignity of the Bench by his learning, his good judgment and his absolute fairness. His integrity, his honorable dealing, his impartiality, his sincere desire to do right, were generally acknowledged. He was a man too whose religion was dear to him, and who tried to live in accordance with the teachings of his faith.

NOTES.

(1) Captain Peter Campbell was living at Trenton, N. J., when the Revolutionary war began. He joined the army under General Howe in December, 1776. He was given a commission as Captain in Brigadier General Skinner's Brigade under Lieut.-Col. Allen. He had raised part of his company when he was taken prisoner and sent to Philadelphia. After eleven month's close confinement he made his escape and rejoined his regiment. He went with Lieut.-Col. Allen to Georgia and was at the taking of Savannah. He rendered gallant service in the defence of Ninety-Six in May, 1781. The garrison of this post consisted of Loyalist troops—150 men of DeLancey's Brigade and 200 of Lieut.-Col. Allen's New Jersey Volunteers—with 200 loyal militia. The post was successfully defended for upwards of thirty days against General Green's army of between 4,000 and 5,000 men. At one time a storming party of the besiegers made a lodgment in the ditch, and were preparing with grappling hooks to pull down the sand bags of the parapet, when Captain Campbell of the New Jersey Volunteers and Captain French of DeLancey's 1st Battalion, each at the head of thirty men, entered the ditch from opposite ends and pushed forward with the bayonet until they met, having cleared all before them. General Greene saw with astonishment his prospects of success vanish and all his efforts foiled by the desperate valor of a comparative handful of men. He could not persuade his soldiers to make another attempt and raised the siege the next day.

In the course of the campaign in South Carolina Captain Campbell was shot through the shoulder and severely wounded. His bravery and good conduct on various occasions were highly commended by Colonel Ferguson and Colonel Moncrief. At the peace in 1783 he came to New Brunswick with his

wife and one child. He received land in the parish of Kingsclear, York County, along with others of his regiment. He died at Maugerville on the 21st of February, 1822, and was buried at Fredericton with Masonic honors.

(2) The grandfather of the Hon. Charles Fisher was a New Jersey Loyalist who served the King in arms throughout the Revolutionary war in Colonel Van Buskirk's battalion of the New Jersey Volunteers. His name appears in the roll of his regiment as Lodewick Fisher, although after his arrival in New Brunswick he adopted the English equivalent Lewis Fisher. The Dutch (or German) element predominated in Van Buskirk's battalion, and by reason of the settlement of many of the men of the corps in New Brunswick and Nova Scotia, the same thrifty element that was conspicuous in the development of Pennsylvania, New York and New Jersey was planted in the Maritime Provinces. Lodewick Fisher with his wife Mary and their three children, Eliza, Henry and Peter, all of whom were born on Staten Island during the turmoil of the American Revolution, came to St. John in September, 1783, in the transport ship "Esther." They settled at St. Ann's Point, now Fredericton. The youngest child Peter, born at Staten Island on June 9th, 1782, was the father of the Hon. Charles Fisher. Peter Fisher was a man of vigorous character and considerable ability. He carried on quite an extensive lumber business at one time. He has the honor, too, of being our first local historian. His little work issued in 1825 from the press of Chubb and Sears of St. John under the title "Sketches of New Brunswick," is now rare and is eagerly sought for by book collectors. It is extremely well written and remarkably accurate, considering the amount of information the author had at his command. On the 15th of August, 1807, Peter Fisher married Susanna

Williams, the Rev. George Pidgeon, rector of Fredericton, officiating at the wedding. Their family was a large one—seven sons and four daughters. The eldest, Charles Fisher, the subject of this sketch, was born on the 16th September, 1808.

Charles Fisher received the degree of B. A. at King's College (now the University of New Brunswick) in 1830. His was the first class to graduate after the incorporation of the college by Royal charter, in 1828, under the name of King's College, Fredericton, with the Style and Privileges of a University. He read law with Judge Street, then Advocate-General, was admitted attorney in 1831 and barrister in 1833. He spent a year at one of the Inns of Court in England. He was unsuccessful in the Provincial election of 1834, but was one of the four members returned for the County of York in the election held on the demise of King William IV in 1837. He was elected again in 1841, and from that time was an important factor in Provincial politics. Dr. Hannay says:

Charles Fisher was perhaps as useful a public man as this Province ever had. He had neither the grace nor the eloquence of L. A. Wilmot, his figure was uncouth, his speech by no means fluent, and his gestures were ungraceful; but he was far superior to Wilmot as a tactician as well as in his knowledge of constitutional law. When the history of the long battle for Responsible Government comes to be written, the name of Charles Fisher will stand high upon the roll of honor.

It used to be said, at the time the political battle for Responsible Government was on, that "Fisher made the balls and Wilmot fired them." This saying had its origin in the fact that Mr. Fisher usually drew up the resolutions which were spoken to by Mr. Wilmot with telling effect in the debates that followed. Mr. Fisher, however, was himself a good debater, and rarely failed to impress the House by the force and logic of his utterances. He appeared to particular advantage in the debates in the Assembly in 1842.

His political fortunes suffered temporary eclipse in 1851 and 1852, when he was defeated at the polls by Hon. Charles McPherson. In 1852 he was appointed one of the Commissioners to consolidate and codify the Provincial statutes and inquire into the proceedings of Courts of Law and Equity and the Law of Evidence. The results of the work of this important commission were embodied in several volumes issued in 1856. Mr. Fisher and his colleagues, Hon. W. B. Kinnear and J. W. Chandler, recommended, amongst other things, a reform in the proceedings of the Courts in relation to actions of ejectment, with a view of dispensing with the services of John Doe and Richard Roe. They state in their report:

We purpose to abolish all the fictions in the action of ejectment, and make it a plain, common-sense controversy between real persons. The law relating to the operation of conveyances of land, made when in adverse possession, is absurd, and the rule should be repealed and the question for trial in future be, in whom is the legal title, irrespective of any such technical jargon. We have prepared simple forms to enable the parties to the action to state their claim and defence intelligibly.

The reference in the paragraph quoted is of course to the fictions connected with the two imaginary characters, *John Doe* and *Richard Roe*. A bill was passed by the Legislature at the session in 1854 in accordance with the recommendation of the commission, but it was disallowed by the British government. In 1861, however, the British parliament itself altered the procedure with reference to the action of ejectment, and John Doe and Richard Doe disappeared from the English statute. It was not until 1894, just forty years after the report of Mr. Fisher and his colleagues, and thirty-three years after action had been taken in regard to the matter in England, that the Legislature of New Brunswick passed an Act doing away with the ancient absurdity and the fictitious adventures of John Doe and Richard Roe.

In 1856 Mr. Fisher was again elected a member of

the House of Assembly, and the next year was called upon to form an administration. He was Attorney-General until 1861, when he retired, owing to questions arising out of the management of the Crown Lands. He proceeded to England with the Hon. John Robertson in the interests of the European and North American railway, and succeeded in arranging a contract for the construction of the line from St. John to Shediac. He was triumphant in the general election of 1862, but suffered overwhelming defeat in January, 1865, on the Confederation question. Towards the close of the same year a bye-election followed, in consequence of the appointment of Hon. John C. Allen to the Bench. To the surprise of his friends and the consternation of the anti-confederation party, Mr. Fisher (who only a few months before had been defeated by 600 majority) was returned by a majority of 710 over his opponent, Mr. Pickard. This was the beginning of the end, so far as opposition to Confederation in New Brunswick was concerned.

Mr. Fisher was a delegate to the Quebec conference in 1864, and also a delegate to England for the purpose of completing arrangements for the union of the Provinces in 1866. In the Confederation government, formed in this year, he resumed his old position of Attorney-General, and he was the first member of the Dominion Parliament elected by the County of York. In 1868 he retired from political life and became Judge of the Supreme Court, a position he had well earned.

Judge Fisher, as a constitutional lawyer, was pre-eminent. He favored laws which have since been passed, the adoption of which his keen perception saw was simply a question of time. As a legislator, he has left a broad and indelible mark upon the statute books of the Province. As a politician, he was loyal to his party and thoroughly consistent from first to

last. He declined the Chief Justiceship on one occasion, on account of party interests, and it is believed that he might have filled the office of Lieutenant-Governor had he so desired. His *alma mater*, the University of New Brunswick, conferred on him the degree of D. C. L. in 1866. Judge Fisher was noted for his hospitality. He married in 1835 Amelia, daughter of David Hatfield. One of their daughters became the wife of Lieut.-Governor John James Fraser. Hon. Charles Fisher died December 8th, 1880, aged 72 years.

Law
Eng.
L421

LAWRENCE, JOSEPH W.
THE DOVES OF
NEW BRUNSWICK AND
THEIR TIMES.

Law
Eng.
L421

Ilson

Brunswick and their times.

NAME OF BORROWER.

Edw. Duc grad
grad stud.

